

**General Pharmaceutical Council**

**Fitness to Practise Committee**

**Principal Hearing**

Remote videolink hearing

**8-12 July 2024**

<b>Registrant name:</b>	Sajjaad Patel
<b>Registration number:</b>	2087604
<b>Part of the register:</b>	Pharmacist
<b>Type of Case:</b>	Misconduct
<b>Committee Members:</b>	Neville Sorab (Chair) Jignesh Patel (Registrant member) Anne Johnstone (Lay member)
<b>Committee Secretary:</b>	Gemma Staplehurst
<b>Registrant:</b>	Present and not represented. Craig Barlow appointed to cross examine Patient A
<b>General Pharmaceutical Council:</b>	Represented by Kay-Marie Tomlinson, Case Presenter
<b>Facts proved:</b>	All
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	Removal
<b>Interim measures:</b>	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 9 August 2024 or, if an appeal is lodged, once that appeal has been concluded. However, the interim suspension set

out in the decision takes effect immediately and will lapse when the decision takes effect or once any appeal is concluded.

### **Particulars of Allegation (as amended)**

*You, a registered pharmacist, whilst working as a pharmacist at Boots Chemist in Rawtenstall, Lancashire:*

*1. On or around 1 September 2020, whilst carrying out a consultation with Patient A who had requested the Emergency Hormonal Contraception, you:*

*1.1. Carried out a physical examination of Patient A where you were not competent and / or trained to perform;*

*1.2. Touched Patient A's breasts;*

*1.3. Touched Patient A's pubic area and / or genitalia;*

*1.4. Touched Patient A's clitoris;*

*1.5. Touched Patient A's bum.*

*2. The touching in charge(s) 1.1, 1.2, 1.3, 1.4 and/or 1.5 above was not clinically justified.*

*3. The touching in charges 1.2, 1.3, 1.4 and / or 1.5 above was carried out without express consent to touch those areas.*

*4. The touching in charge(s) 1.1, 1.2, 1.3, 1.4 and/or 1.5 above was sexual in nature and / or sexually motivated in that:*

*4.1. It was of areas that are physically intimate areas;*

*4.2. It was carried out for sexual gratification.*

*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

Document 2- GPhC skeleton argument

## Determination

### Introduction

1. This is the written determination of the Fitness to Practise Committee at the General Pharmaceutical Council (“the Council”).
2. The hearing is governed by *The Pharmacy Order 2010* (“the Order”) and *The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010* (“the Rules”).
3. The statutory overarching objectives for these regulatory proceedings are:
  - a. To protect, promote and maintain the health, safety and well-being of the public;
  - b. To promote and maintain public confidence in the professions regulated by the Council; and
  - c. To promote and maintain proper professional standards and conduct for members of those professions.
4. The Committee also has regard to the guidance contained in the Council’s *Good decision making: Fitness to practise hearings and sanction guidance* as revised March 2024.
5. A Principal Hearing has up to three stages:
  - Stage 1. Findings of Fact – the Committee determines any disputed facts.
  - Stage 2. Findings of ground(s) of impairment and impairment – the Committee determines whether, on the facts as proved, a statutory ground for impairment is established and, if so, whether the Registrant’s fitness to practise is currently impaired.
  - Stage 3. Sanction – the Committee considers what, if any, sanction should be applied if the Registrant’s fitness to practise is found to be impaired.

### Service of Notice of Hearing

6. The Committee has seen a letter dated 4 June 2024 from the Council headed “Notice of Hearing” addressed to the Registrant. The Committee was satisfied that there had been good service of the Notice in accordance with Rules 3 and 16.

### Application to adjourn the Principal Hearing

7. The Registrant made an application to adjourn the Principal Hearing to September 2024 on the basis that:
  - a. PRIVATE

- b. The longer the Council's proceedings have gone on, the worse he has felt.
  - c. He has already been through a criminal hearing and does not want to go through a regulatory hearing at this point in time.
  - d. He will feel the same prior to any future hearing.
  - e. He was heavily motivated by his wife to attend today and explain his situation.
8. The Council opposed the application on the basis that:
- a. There is no medical evidence to support the Registrant's claim of PTSD, stress and anxiety.
  - b. The Registrant was aware of the Principal Hearing since the Notice of Hearing dated 4 June 2024 and could have informed the Council and Committee prior to the morning of the Principal Hearing. The Registrant could have informed the Council and Committee when he received the bundle and Council's skeleton argument, 16 days and 9 days prior to the hearing, respectively.
  - c. The Council has four witnesses it wishes to call, one of whom PRIVATE wishes for the Principal Hearing to be over with as soon as possible PRIVATE.
  - d. There is a public interest in concluding this matter without delay.
9. The Committee noted Rule 37 which sets out in pertinent part:

*"(1) The chair may, of their own motion or upon the application of a party, postpone any meeting or hearing of which notice has been given under these Rules before the hearing begins.*

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

*(a) no injustice is caused to the parties; and*

*(b) the decision to adjourn is made after hearing representations from the parties (where present).*

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

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

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

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

*(d) fairness to the parties.*

*(4) Where a person concerned applies for a postponement or adjournment on grounds of ill- health—*

*(a) the person concerned must adduce appropriate medical certification in support of that application; and*

*(b) the chair or Committee may, if not satisfied by the medical certification produced, require the person concerned to submit to be examined by a registered medical practitioner approved by the Council.”*

10. In light of the submissions received and Rule 37, the Committee declined the Registrant’s application on the basis that:
- a. PRIVATE
  - b. The Registrant knew about the Principal Hearing since 4 June 2024 and only made an application to adjourn on the morning of the Principal Hearing;
  - c. There are witnesses ready for this Principal Hearing PRIVATE
  - d. There is a public interest in continuing with the Principal Hearing today.

#### **Application to amend the particulars of allegation**

11. The Committee heard an application under Rule 41 from the Council to amend the Particulars of Allegation as follows (additions in underline and removals in strikethrough):

*You, a registered pharmacist, whilst working as a pharmacist at Boots Chemist in Rawtenstall, Lancashire:*

1. *On or around 1 September 2020, whilst carrying out a consultation with Patient A who had requested the Emergency Hormonal Contraception, you:*
  - 1.1. *Carried out a physical examination of Patient A where you were not competent and / or trained to perform;*
  - 1.2. *Touched Patient A’s breasts;*
  - 1.3. *Touched Patient A’s pubic area and / or genitalia;*
  - 1.4. *Touched Patient A’s clitoris;*
  - 1.5. *Touched Patient A’s bum.*
2. *The touching in charge(s) 1.1, 1.2, 1.3, 1.4 and/or 1.5 above was not clinically justified.*
  - ~~2.1. *Not clinically justified.*~~

~~2.2. Carried out without express consent to touch those areas.~~

3. The touching in charges 1.2, 1.3, 1.4 and / or 1.5 above was carried out without express consent to touch those areas.
4. The touching in charge(s) 1.1, 1.2, 1.3, 1.4 and/or 1.5 above was sexual in nature and / or sexually motivated in that:
  - 4.1. It was of areas that are physically intimate areas;
  - 4.2. It was carried out for sexual gratification.

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

12. The Council submitted that the amendments are made to further accurately reflect the evidence. The proposed amendments are not based on new evidence, and for that reason, that there will be no prejudice caused to the Registrant if the application is granted.
13. The Registrant did not oppose the application.
14. The Committee accepted that, subject to the requirements not to prejudice the fairness of these proceedings, the allegations should reflect the gravity of the Registrant's alleged conduct or behaviour (*PSA v HCPC and Doree [2017] EWCA Civ 319*). However, to introduce late an entirely new case requiring extensive investigation would potentially be unfair (*Bittar v FCA [2017] UKUT 82 (TCC)*). The Committee was of the view that the amendments to the allegations reflect the evidence. The amendments are not based on new evidence and, consequently, the amendments would not prejudice the fairness of these proceedings.

#### **First application to admit further evidence**

15. On 8 July 2024, the Registrant made an application to admit evidence in the form of character references from his criminal trial which took place in January 2023. He submitted that:
  - a. It is too late for the witnesses to come to the Principal Hearing, but he is happy for the content of the character references to be read out in the Principal Hearing.
  - b. Although he should have done this beforehand, it has been a difficult six weeks for him PRIVATE.
  - c. He can provide the contact information of the individuals (including family members and colleagues) providing the character references to assist the Council with any verifications.
16. The Council opposed the application on the basis that:
  - a. It needs to verify whether these character references can be relied upon.

- b. The character references are over 18-months old and the views of those providing them may have changed.
17. The Committee noted rule 18(5) which set out: *“Any document which has not been served on the secretary by the end of [No later than 9 days before the Monday of the week in which the hearing is to take place] is, except in exceptional circumstances, not to be admitted into evidence at the hearing.”* Should the Committee consider that the *“exceptional circumstances”* have been met, then the evidence needs to be relevant and fair (Rule 24(2)).
18. The Committee rejected the application as *“exceptional circumstances”* had not been met on the basis that:
- a. The threshold of *“exceptional circumstances”* is a high threshold to meet;
  - b. The character references are 18-months old, were in the Registrant’s possession, and could have been provided earlier; and
  - c. The Registrant has not provided any medical evidence of his PTSD, stress or anxiety.

**Second application to admit further evidence**

19. On 9 July 2024, the Registrant made another application to admit evidence in the form of customer reviews which were made during his time working at the pharmacy. He submitted that:
- a. He wanted to place these reviews before Witness C.
  - b. He only managed to retrieve these documents from his solicitors who acted for him at the criminal trial on 8 July 2024. Upon questioning from the Committee, the Registrant stated that he only requested them on 8 July 2024.
  - c. He was unaware of the procedure to provide documents he wished to rely upon in the Principal Hearing.
20. The Council opposed the application on the basis that exceptional circumstances have not been met as:
- a. The Registrant was aware of the existence of these customer reviews since his criminal trial in January 2023.
  - b. The Registrant was aware of the Principal Hearing since 4 June 2024 and could have made earlier attempts to retrieve the customer reviews.
21. The Committee noted rule 18(5) which set out: *“Any document which has not been served on the secretary by the end of [No later than 9 days before the Monday of the week in which the hearing is to take place] is, except in exceptional circumstances, not to be admitted into evidence at the hearing.”* Should the Committee consider that the

*“exceptional circumstances”* have been met, then the evidence need to be relevant and fair (Rule 24(2)).

22. The Committee rejected the application as *“exceptional circumstances”* had not been met on the basis that:
  - a. The threshold of *“exceptional circumstances”* is a high threshold to meet;
  - b. The customer reviews are 18-months old, were available to Registrant to obtain and could have been obtained earlier; and
  - c. Rule 18 was set out in the Notice of Hearing which provided the Registrant with the procedure to provide documents he wished to rely upon in the Principal Hearing.

### **Background**

23. On 1 September 2020, Patient A attended Boots Chemist in Rawtenstall (*“the pharmacy”*) in order to obtain the *“morning after pill”*. Patient A explained that she was embarrassed to ask about the pill, therefore when she saw the Registrant, she asked if the pharmacy carried out consultations. He then took her into a small room where she asked him for the pill. Patient A explains that the Registrant asked her if she had taken the pill before, she replied she had taken it a number of years prior which was when he said *“we do things differently now. I need to examine your stomach to check your hormones”*. Patient A explains that the Registrant asked her a number of questions with an iPad followed by him asking *“right am I alright to examine your stomach now”* and *“would you like a chaperone for the examination?”* Patient A responded *“no I’m alright as you’re only checking my stomach”*.
24. In relation to the actual physical examination, Patient A explained that the Registrant put on blue rubber gloves then asked her to expose her stomach. Patient A stated that she wore shorts which had a waistband which was slightly higher than normal, so she turned it down so her stomach was visible then lifted her top to the bottom of her crop top. At this point, only her stomach was visible just lower than her belly button. Patient A explains that the Registrant asked her *“can we do a bit lower”*. Patient A describes that she felt *“uncomfortable”* and *“incredibly vulnerable”* *“as she did not think the examination would entail anything like this”*. She lowered her shorts exposing her public region. Patient A explains that the Registrant stated that he would push quite hard on her stomach and that she had to push back so that she would not fall over. Patient A recalls that the Registrant started pressing around the underneath of her rib cage with his fingers, asking her not to breathe in. The Registrant then moved his fingers towards her belly button when he found a lump which Patient A asked if it was a hernia. The Registrant advised her to see the GP for a scan for the lump. The Registrant’s hands began to go further down Patient A’s body towards her vagina.



25. Patient A explained that after the Registrant examined her stomach his hands went further down the centre of her stomach towards her vagina. Patient A explained that the Registrant *"pushed and prodded"* which made her say *"I need a wee. Don't press on my bladder"*. In response, the Registrant confirmed he would not press on the bladder and showed her with his hands where the bladder was, he also drew a heart shape over the top of her knickers but also touching parts of her skin around the top of her groin area when explaining where her womb was positioned. Patient A states that after the Registrant explained where her bladder was *"out of nowhere"* said *"and here is where you vagina is"*, and pointed to where it was. The Registrant then *"prodded"* around the area where her tattoo was just above her public region and asked if it hurt.
26. Patient A describes that after the Registrant drew a heart shape on her body to point out where her womb was positioned, he then slid one hand down to her knickers and touched her clitoris with his fingers. Patient A explained that he pressed on it and asked her if it hurt. Patient A explained that she thought the Registrant was going to *"put his fingers in"*. Patient A described that the Registrant wore a mask at the time, but she could see his eyes and he constantly stared at her which *"freaked"* her *"out"*. She also explained that his hand were down her knickers for a few seconds but it felt like minutes. She stated that she froze when she was stood in front of him.
27. Patient A details that during the physical examination that the Registrant carried out on her, after he had examined her stomach, followed by him touching her pubic area, genitalia and/or clitoris, he moved his hands up her body and said *"I need to do up here"*. Patient A describes that the Registrant's hands moved from her stomach, he pushed his hands underneath her top, crop top and bra through the middle of her chest, sliding his hands to each side and cupping both breasts. Patient A states that this lasted a split second as he squeezed her breasts once before removing his hands from her clothing. Patient A explained that the Registrant looked at her face the whole time that he touched her breasts and must have seen the fear in her face and that she had frozen on the spot.
28. Patient A explains that after the Registrant squeezed her breasts, he asked her to turn around so he could check her back. Patient A was unsure why he needed to do this, but she did what he asked. Patient A explained that the Registrant touched all over her back in a prodding motion, lifting her top up slightly higher than her bra strap and he remarked *"ooo, you've got some nice tattoos"*. He then moved his hands to the bottom of her back and requested to move the shorts a bit lower. Patient A said yes to this request when the Registrant exposed roughly half of her bum. Patient A explained that the Registrant felt around her bum with his hands.
29. On 2 September 2020, the Registrant was arrested and interviewed under caution. During the interview, the Registrant stated that on 1 September 2020, a female attended the pharmacy for the morning after pill with her 2-year-old daughter. He explained that he took her to the consultation room, asked her a number of questions from an iPad. In response to the questions, the female stated amongst detailing parts

of her medical history that she had a bump to the left side of her stomach. The Registrant at this point offered to examine her. The Registrant stated that he explained what the examination would entail which was to feel underneath the breast and above the private parts. He put his gloves on and had on a mask. He also stated that he explained that he told her to stand firmly as he did not want to push her back. He confirmed that he carried out the examination because she said she was in pain. The Registrant further explained that he asked the female to turn around and he pressed the middle of her back, but she stated that there was no pain in that part of her body. The Registrant stated that he explained the side effects of the medication and the absorption of the medication. He stated that the female stated that she did not know where her womb was so he could have used that opportunity to touch her then when showing her where the womb was, but he did not, he just explained where it was.

30. The Registrant explained at the end of the examination, the female took the pill and seemed fine. He also confirmed that she declined to have a chaperone when he offered one at the beginning of the consultation. When the Registrant was asked what the purpose was for the examination, he said that he was looking for the location of the lump and wanted to see whether it may affect the absorption, or whether the female would be able to take the drug or to check whether there was something else which was sinister which may require her to see a doctor. The Registrant denied putting his hands in the female's knickers, he denied touching her genitals or breasts. The Registrant confirmed that he was not attracted to the Registrant, and he has never performed an examination where he has touched someone's breasts or genitals.

### **Evidence**

31. Patient A provided the following evidence:
  - a. She has completed a Masters Degree in Mental Health Nursing as a mental health practitioner. She started studying Applied Psychology and Counselling BSc (Hons) in 2019 and was still studying at the time of the incident.
  - b. On Tuesday 1 September 2020, she attended the pharmacy in order to obtain the morning after pill. Patient A confirmed that she visited the pharmacy on the first day after the bank holiday weekend which would have been Tuesday 1 September 2020.
  - c. She felt vulnerable and embarrassed to ask for the morning after pill. Patient A asked the Registrant whether the pharmacy carried out consultations. He confirmed they did and then took her into a private room where she asked him for the morning after pill. Patient A's daughter, who was two at the time, also came into the private examination room. Patient A said that the room was not really set up for private physical examinations. Patient A was asked to step on weighing scales.

- d. The Registrant asked Patient A questions from an iPad relating to the supply of the emergency hormonal contraception (EHC) which included whether she had taken the morning after pill before. Patient A replied that she had taken it a number of years prior which was when he said *"we do things differently now"*. The Registrant said that he needed to examine Patient A's stomach to *"check your hormones"*. The Registrant also asked Patient A the age of her partner, which Patient A considered to be a strange question.
- e. Following the questions from the iPad, the Registrant asked Patient A *"right am I alright to examine your stomach now"* and *"would you like a chaperone for the examination?"* Patient A responded *"no I'm alright as you're only checking my stomach"*. Patient A did not question whether an examination was needed and just assumed that an examination was needed for the morning after pill. The Registrant did not tell Patient A that anything else needed to be examined at this stage other than her stomach. Patient A did not expect any other part of her body to be touched during the examination. Patient A did not explain that there was anything wrong with her stomach (e.g. pain).
- f. The Registrant put on blue rubber gloves then asked her to expose her stomach. Patient A stated that she wore shorts which had a waistband which was slightly higher than normal, so she turned it down so her stomach was visible then lifted her top to the bottom of her crop top. At this point, only her stomach was visible just lower than her belly button. Patient A was ok with this. The physical examination was conducted with Patient A standing up.
- g. The Registrant asked her *"can we do a bit lower"*. The Registrant did not explain that further exploration on Patient A's body was necessary. Patient A describes that she felt *"uncomfortable"*, *"embarrassed"* and *"incredibly vulnerable"* *"as she did not think the examination would entail anything like this"*. Patient A was expecting the Registrant to examine her stomach and not for her shorts to be lowered. Patient A had never been examined by a pharmacist before and never been examined for the morning after pill, so Patient A did not know what to expect. Patient A lowered her shorts exposing her pubic region. Patient A's tattoos were only visible when she lowered her shorts. Patient A explains that the Registrant stated that he would push quite hard on her stomach and that she had to push back so that she would not fall over. Patient A did not tell the Registrant at this stage about any stomach issues that she may have.
- h. The Registrant started pressing around the underneath of her rib cage with his fingers, asking her not to breathe in. The Registrant then moved his fingers towards her belly button when he found a lump which Patient A asked whether it was a hernia. The Registrant advised her to see the GP for a scan for the lump. This was the first time that the Registrant and Patient A discussed any problems (that being the lump/hernia). Patient A's tattoo is nowhere near where the lump was found. The Registrant's hands began to go further down Patient A's body towards her vagina.

- i. The Registrant “*pushed and prodded*” which made her say “*I need a wee. Don’t press on my bladder*”. In response, the Registrant confirmed he would not press on the bladder and showed her with his hands where the bladder was, he also drew a heart shape over the top of her knickers but also touching parts of her skin around the top of her groin area when explaining where her womb was positioned. Patient A never asked the Registrant to explain where her womb is. Patient A states that after the Registrant explained where her bladder was “*out of nowhere*” said “*and here is where you vagina is*”, and pointed to where it was. The Registrant then “*prodded*” around the area where her tattoo was just above her public region and asked if it hurt.
- j. The Registrant then slid one hand down her knickers and touched Patient A’s clitoris with his fingers. Patient A explained that he pressed on it and asked her if it hurt. Patient A explained that she thought the Registrant was going to “*put his fingers in*”. Patient A described that the Registrant wore a mask at the time, but she could see his eyes and he constantly stared at her which “*freaked*” her “*out*”. She also explained that his hand was down her knickers for a few seconds but it felt like minutes. She stated that she froze when she was stood in front of him.
- k. Next, the Registrant moved his hands up Patient A’s body and said “*I need to do up here*”. Patient A describes that the Registrant’s hands moved from her stomach, he pushed his hands underneath her crop top and bra through the middle of her chest, sliding his hands to each side and cupping both breasts. Patient A stated that this lasted a split second as he squeezed her breasts once before removing his hands from her clothing. Patient A explained that the Registrant looked at her face the whole time that he touched her breasts and must have seen the fear in her face and that she had frozen on the spot.
- l. Patient A explains that after the Registrant squeezed her breasts, he asked her to turn around so he could check her back. Patient A was unsure why he needed to do this, but she did what he asked. Patient A explained that the Registrant touched all over her back in a prodding motion, lifting her top up slightly higher than her bra strap and he remarked “*ooo, you’ve got some nice tattoos*”. Patient A said that she never engaged with the Registrant in a conversation about her tattoos. He then moved his hands to the bottom of her back and requested to move the shorts a bit lower. Patient A said yes to this request when the Registrant exposed roughly half of her bum. Patient A explained that the Registrant felt around her bum with his hands.
- m. The Registrant told Patient A that he checked all the areas on her body (breast, pubic area, clitoris, bum). Patient A never gave any verbal consent for the Registrant to touch those areas of her body, but she never stopped him. Patient A did not stop the Registrant because she froze, was scared and she was upset. The Registrant did not react to Patient A being frozen; he continued touching Patient A.

- n. Patient A cannot remember how the Registrant was touching her bum as everything had become blurry at this stage and she was just hoping to get out of the room quickly. The Registrant stopped touching Patient A after roughly one minute and then said to me, *“right, that's the examination done. I need to print the form off for me to sign and I'll bring back some water for the tablet.”* Patient A was in complete shock about what had just occurred.
- o. Patient A remembers filling her water bottle from a water fountain. She further remembers other customers being present post-examination, but did not complain to anyone else as she just wanted to leave the pharmacy. She remembers filling in a form, but does not remember who signed it.
- p. As she was leaving, Patient A called her friend and said *“I think I've just been violated”* and explained to her what happened.
- q. Patient A rang Asda pharmacy. She explained what had happened to her and they said that due to COVID it would be a telephone consultation in order to get the morning after pill and that ordinarily they would not examine people as Pharmacists are not doctors. Asda gave Patient A two telephone numbers as they explained that it was not right what had happened. These numbers were for Boots Head Office and for the Council.
- r. Patient A feels sick about what happened. She has tried not to cry about it as she has three children at home who all depend on her and she does not want them seeing her upset. Patient A said that there was nothing accidental about the Registrant's touching of her.
- s. Patient A said that the Registrant had changed his witness statement once he received her medical records. Patient A said that in the Registrant's first statement, he said that, through the physical examination, he was checking her hormones, but this changed to checking her stomach in his second statement.
- t. She said that she has had nightmares and flashbacks about this incidence and was only providing evidence to prevent the Registrant from doing this to anyone else. Patient A said that she did not mis-remember or exaggerate the incident. She has no reason to fabricate her evidence and put herself through this.
- u. There was a Crown Court trial concerning this incident in which the Registrant was found not guilty.

32. Witness B provided the following evidence:

- a. The Registrant was not an independent prescriber at the date of the allegations, therefore, he did not have relevant clinical examination skills. Diagnosis, assessment, treatment, or screening cannot be performed by the Registrant.
- b. No evidence has been provided by the Registrant of any training relevant to the condition(s) for which the examination was carried out. The registrant alleges to

have examined the patient for a bump / lump which would not form part of an EHC consultation or pharmacy service.

- c. An EHC consultation would have involved:
  - i. Assessing whether emergency contraception is indicated.
  - ii. Taking a full history to help decide on the most appropriate method of emergency contraception.
  - iii. Carry out a risk assessment for sexual abuse, rape, and non-consensual sex (if applicable).
  - iv. Considering the risk of sexually transmitted infections (STIs).
  - v. Offering emergency contraception if indicated/appropriate (explaining the choice of EC options).
  - vi. Advising on the need for ongoing contraception.

If certain circumstances came up, the pharmacist could refer the patient to a GP. In no circumstances would a physical examination would be required.

- d. It would not be unreasonable to check a patient's BMI as this could affect the efficacy of the morning after pill.
- e. The examination conducted by the Registrant would not have formed part of the EHC consultation, nor is it mentioned in any guidance including the Faculty of Sexual and Reproductive Healthcare (FSRH) Guideline for Emergency Contraception and CKS / NICE guidelines.
- f. Witness B details that undertaking an intimate physical examination of a patient would be mostly outside the competency of a pharmacist who is not a prescriber. A non-prescriber may check for oral thrush, a verruca, a wart, a sprained ankle, but this would just be through looking rather than any physical touch and established through questioning first.
- g. The General Medical Council guidance on intimate examinations details that *"before conducting an intimate examination, you should: explain to the patient why an examination is necessary and give the patient an opportunity to ask questions."*
- h. As part of an EHC consultation, the question regarding malabsorption relates to whether a patient has a severe malabsorption syndrome such as Crohn's disease which may impair the efficacy of the EHC medication *"Severe malabsorption syndromes, such as Crohn's disease, might impair the efficacy of levonorgestrel"*. At no point would a pharmacist (non-prescriber) physically examine a patient for this purpose.
- i. There is no stomach examination to check hormones.

- 33. Witness C provided the following evidence:

- a. Witness C is the manager of Boots Clitheroe.
- b. The Registrant was the Responsible Pharmacist at the pharmacy on both 1 and 2 September 2020.
- c. The Registrant was the only pharmacist working on 1 September 2020 and was the duty pharmacist.
- d. A pharmacist should not carry out physical examinations as they are not trained to examine patients. Witness C was not aware whether the Registrant had specific training to examine patients.
- e. The pharmacy did not have any Standard Operating Procedures or consent forms on examining patients.
- f. The Registrant explained to Witness C that a female, now known to be Patient A, came to the pharmacy for the morning after pill. He asked her if she wanted a chaperone, she declined, then they went into the consultation room. The Registrant explained that Patient A said she had pain so he examined her below the stomach area, she took the morning after pill then left the pharmacy.
- g. Witness C filled in the incident report form on 2 September 2020 in which it said that Patient A disclosed that she had a lump, following which the Registrant carried out the physical examination of Patient A's stomach. Witness C filled out the incident report with information supplied by the Registrant.
- h. Witness C said that a physical examination is never needed in order to obtain the morning after pill. The procedure is to ask whether a chaperone is needed, to go into a consultation room, ask questions as set out in the form and provide the patient with the morning after pill.
- i. At the time the Registrant gave Patient A a physical examination, Witness C was on her lunch break, but was still present in the pharmacy at the back. She would always tell another member of staff before taking a break. There were three or four staff members on the shop floor when Witness C took her break.
- j. The consultation room is next to the pharmacy on the shop floor. It is a decent size, not too small and has a filing cabinet, two chairs and a foldable table extending from the wall. There is limited space remaining in the room. The consultation room is never referred to as the "*back room*".
- k. The Registrant had never received any complaints, other than this one. He had a good working relationship with all customers and patients. He received excellent customer care reviews including "*cannot praise this pharmacist enough*" and "*absolute gem of a person*".
- l. No staff members felt uncomfortable around the Registrant or questioned his professionalism.

m. The Registrant had a good relationship with all female members of staff; there was no inappropriate closeness or touching.

34. Witness D provided the following evidence:

- a. She is the area manager for Boots in North Manchester. The pharmacy is where the Registrant was employed and one of the stores that she is responsible for.
- b. Witness C told Witness D that she was on her break at the time of the incident, which was on 1 September 2020.
- c. On 2 September 2020, Witness D was informed by Witness C that the police arrived at the pharmacy and arrested the Registrant.
- d. On 3 September 2020, Witness D and the regional pharmacist governance manager carried out a fact-finding interview with the Registrant. During this, the Registrant informed them that:
  - i. a patient attended with a child in a pram, he invited her into the consultation room where she requested the morning after pill.
  - ii. He said that he asked the patient if she had any stomach issues, she mentioned a lump and he offered to examine her which she agreed to.
  - iii. He said that the purpose of the examination was to check if the lump would affect the absorption of the morning after pill. He also said that the purpose of the examination was to see what the lump was like and the surrounding area to see if there was any pain.
  - iv. The Registrant explained that he told the patient he would examine her below the breast and above the private area. He offered a chaperone but she declined. He stated that he used his fingers to prod around the area complained of on the left side of the stomach. He felt the lump which was small. He stated that he did not touch her clothing, just the middle area which Witness D understood to mean the stomach.
  - v. The Registrant also detailed that he touched her back, they discussed her tattoos and she seemed comfortable.
  - vi. The Registrant explained that the patient asked where her womb was, and he stated that would have been the perfect opportunity to touch her to explain where it was but he did not. He stated that he verbally explained where it was.
  - vii. The Registrant denied touching the patient's breasts and genitals.
- e. The Registrant said that he just felt that he wanted to help Patient A as much as he possibly could and give her the best care that he could give at that particular time.
- f. Witness D asked the Registrant if he had received any further training, to which he responded: "*no – just through reading. Just trying to help out.*" This response made



Witness D feel uncomfortable as it highlighted that the Registrant did not have skills or experience in respect of the examination he performed and therefore should not have offered it. At no point in Witness D's career as a pharmacist has she ever touched anyone, probed, no matter what the concern is.

- g. If a patient comes into the pharmacy requesting the morning after pill, depending on the circumstances and how busy the store is, Witness D would expect a pharmacist to invite the patient into the consultation room to complete the consultation, as some of the questions can be quite personal. However, she would not expect a pharmacist to offer to do a physical examination. Witness D would have expected the Registrant to ask questions and then refer the patient to their GP. An examination of this sort is not something Witness D would normally expect a pharmacist to do.
  - h. The examination room does not have the facilities for a physical examination given that the patient would have to lie down and the examination room does not have facilities to accommodate this.
  - i. The Registrant returned to work on 21 September in a different store so that he could work double pharmacist capacity so that he would never be left on his own and to ensure that he was adhering to his bail conditions. Double pharmacist capacity means that the Registrant could work in a store with another pharmacist.
  - j. On 27 February 2021, the Registrant informed Witness D that he had received notification from the police that he would face formal charges in relation to the allegations of sexual assault. A decision was taken to suspend the Registrant and following a verbal conversation with him. Witness D wrote to him on 11 March 2021 to confirm this.
  - k. The Registrant has received no complaints before or after this incident.
  - l. The Registrant had a good working relationship with all customers and patients. He was considered to be a good pharmacist.
  - m. The Registrant assisted care home services in Boots in Rochdale. The staff members in the care home were female and the Registrant would be left alone with them. There were no complaints of the Registrant and he was asked to come back and assist with the service.
35. The Registrant provided the following evidence during his police interview:
- a. on 1 September 2020, a female attended the pharmacy for the morning after pill with her 2-year-old daughter.
  - b. He explained that he took her to the consultation room, asked her a number of questions from an iPad. In response to the questions, the female stated amongst detailing parts of her medical history that she had a bump to the left side of her stomach. The Registrant at this point offered to examine her.

- c. The Registrant stated that he explained what the examination would entail which was to feel underneath the breast and above the private parts. He put his gloves on and had on a mask. He also stated that he explained that he told her to stand firmly as he did not want to push her back.
  - d. He confirmed that he carried out the examination to check the absorption of the morning after pill and because the female complained of pain there.
  - e. The Registrant further explained that he asked the female to turn around and he pressed the middle of her back, but she stated that there was no pain in that part of her body.
  - f. The Registrant stated that he explained the side effects of the medication and the absorption of the medication. He stated that the female stated that she did not know where her womb was so he could have used that opportunity to touch her then when showing her where the womb was, but he did not, he just explained where it was.
  - g. The Registrant explained at the end of the examination, the female took the pill and seemed fine.
  - h. He also confirmed that she declined to have a chaperone when he offered one at the beginning of the consultation.
  - i. When the Registrant was asked what the purpose was for the examination, he said that he was looking for the location of the lump and wanted to see whether it may affect the absorption, or whether the female would be able to take the drug or to check whether there was something else which was sinister which may require her to see a doctor.
  - j. The Registrant denied putting his hands in the female's knickers, he denied touching her genitals, breasts or private parts.
  - k. The Registrant confirmed that he was not attracted to the Registrant, and he has never performed an examination where he has touched someone's breasts or genitals.
36. Before the Committee, the Registrant provided the following evidence:
- a. He never used the words "*back room*" for the consultation room.
  - b. He never told Patient A that "*we do things differently now and I need to examine your stomach.*"
  - c. He asks whether the patient has any stomach issues in order to avoid any medical jargon.
  - d. He never said that he was going to examine Patient A's stomach to check for hormone levels as this does not make any medical sense. He has never mentioned that he is going to check a patient's hormone levels.

- e. Everything that he asked Patient A was from the Boots EHC supply form (which was on the iPad). This would include things that Patient A would find “*strange*” such as age of partner and BMI.
- f. When the Registrant asked Patient A if she had stomach issues, she brought to his attention a lump in her stomach. It was only at this point that he asked her if she wanted him to take a look and asked if she wanted a chaperone.
- g. The Registrant told Patient A, if at any point during the examination she felt uncomfortable, that she should let him know.
- h. During the time in the consultation room, Patient A’s daughter was fussing and the Registrant said that he had a son of a similar age who was also fussy. This small talk was in order to make Patient A feel more comfortable.
- i. He denies all the allegations and did not touch Patient A’s genitals, breasts, bum or any private parts, even by accident. He accepted that the genitals, breasts, bum and clitoris were private areas of the body. He did not show Patient A where her bladder was or draw anything on her body.
- j. He cannot remember where Patient A’s tattoos were, whether on her torso or back, but that she mentioned that she had a number of tattoos.
- k. When the Registrant was explaining the potential side-effects of the morning after pill, which included a change in her menstrual cycle, Patient A said that she did not know where her womb was and he pointed at it without touching it.
- l. In Patient A’s statement she said that the Registrant drew a heart on her knickers; however, in the criminal trial she said that it was drawn under her knickers. Further, during the criminal trial:
  - i. Patient A’s then boyfriend said that Patient A told him that she was touched over her bra, not under the bra and from the back.
  - ii. The Asda pharmacist said that Patient A told him that the Registrant touched her stomach and a little further up towards her breasts and a little further down.
  - iii. He was acquitted by a jury who returned a not guilty verdict within 40 mins.
- m. The Registrant said that he has never has access to Patient A’s medical records.
- n. He has been honest and transparent throughout and only knew the full extent of the allegations just prior to the police interview. He was the one who informed the Council of the allegations against him and he had nothing to hide.
- o. He deeply regrets the examination, which he should not have done and stuck to verbal questions, signposted Patient A to her GP. He was naïve to conduct the examination. He accepts that he did not complete any external training (outside of his degree or qualifications) to do any such examinations. He accepts that it is

not essential to carry out physical examination prior to providing the EHC. The examination was conducted as a result of Patient A raising that she had a lump.

- p. His past experiences have made him overly cautious. He wanted to go the extra mile and make sure that the lump was nothing sinister. During this period (September 2020), there was the COVID pandemic and it was difficult to get GP appointments.
- q. The examination was in no way sexually motivated. He was wearing gloves making any sexual motivation less likely. He was not attracted to Patient A in any way or had any sexual inclination of any sort towards her.
- r. He had a good life with a new property and baby on the way. He would not have jeopardised this by doing what was alleged.
- s. He does not lie as his father instilled in him to always tell the truth as one lie leads to another lie and by telling the truth, there is no need to remember any lies.
- t. The Registrant's wife has stuck by his side as she knows that he goes extra mile to support patients.
- u. At Boots, he worked with other female members of staff. If he was a sexual monster/predator, then there would have been other complaints about him. He has always been respectful to all colleagues. Boots continued to employ the Registrant due to believing that Registrant did not do anything wrong.

### **Decision on Facts**

37. The burden falls upon the Council to prove the facts. The Committee must consider whether the facts have been established in accordance with the civil standard of proof, namely more likely than not (balance of probabilities).

Allegation 1.1 – The Registrant carried out a physical examination of Patient A where you were not competent and / or trained to perform

38. The Registrant has admitted to carrying out an examination on Patient A in which he felt underneath her breast, above her private parts, and pressed the middle of her back. During his evidence before the Committee, the Registrant accepted that he did not complete any external training (outside of his degree or qualifications) to do any such examinations. He accepts that it is not essential to carry out physical examination prior to providing the EHC.
39. During Boots' internal investigation, Witness D asked the Registrant if he had received any further training, to which he responded: "*no – just through reading. Just trying to help out.*" This response made Witness D feel uncomfortable as it highlighted that the Registrant did not have skills or experience in respect of the examination he performed. Witness D further provided evidence that at no point in her career as a pharmacist has she ever touched anyone, probed, no matter what the concern is.

40. Witness B provided evidence that:
- a. The Registrant was not an independent prescriber at the date of the allegations; therefore, he did not have relevant clinical examination skills. Diagnosis, assessment, treatment, or screening cannot be performed by the Registrant.
  - b. No evidence has been provided by the Registrant of any training relevant to the condition(s) for which the examination was carried out. The registrant alleges to have examined the patient for a bump / lump which would not form part of an EHC consultation or pharmacy service.
  - c. The examination conducted by the Registrant would not have formed part of the EHC consultation, nor is it mentioned in any guidance including the FSRH Guideline for Emergency Contraception and CKS / NICE guidelines.
  - d. Witness D details that undertaking an intimate physical examination of a patient would be mostly outside the competency of a pharmacist who is not a prescriber.
  - e. As part of an EHC consultation, the question regarding malabsorption relates to whether a patient has a severe malabsorption syndrome such as Crohn's disease which may impair the efficacy of the EHC medication "*Severe malabsorption syndromes, such as Crohn's disease, might impair the efficacy of levonorgestrel*". At no point would a pharmacist (non-prescriber) physically examine a patient for this purpose.
  - f. There is no stomach examination to check hormones.
41. In light of this evidence, the Committee considered that it is more likely than not that the Registrant carried out a physical examination of Patient A which he was not competent and / or trained to perform.

Allegations 1.2-1.5

42. The Committee considered it helpful to set out areas of dispute between the parties which will assist with allegations 1.2-1.5.

*Reason for the examination*

43. Patient A provided evidence that the Registrant said that the examination was to check her hormones. Prior to the examination, Patient A did not explain to the Registrant that there was anything wrong with her stomach (e.g. pain).
44. In his police interview, the Registrant provided evidence that:
- a. in response to the questions, Patient A stated, amongst detailing parts of her medical history, that she had a bump to the left side of her stomach. He then offered to examine her;
  - b. Later in the police interview, the Registrant said that he carried out the examination to check the absorption of the morning after pill and because the female complained of pain there;

- c. whether there was something else which was sinister which may require her to see a doctor.
45. Before the Committee, the Registrant said that he asked Patient A if she had stomach issues, where she brought to his attention a lump in her stomach. It was at this point that he asked her if she wanted him to take a look and asked if she wanted a chaperone.
46. The Registrant explained to Witness C that Patient A said she had pain so he examined her below the stomach area. During Boots' internal investigation, the Registrant said that:
- a. he asked the patient if she had any stomach issues, she mentioned a lump and he offered to examine her which she agreed to; and
  - b. the purpose of the examination was to check if the lump would affect the absorption of the morning after pill. He also said that the purpose of the examination was to see what the lump was like and the surrounding area to see if there was any pain.
47. Both Patient A and the Registrant were consistent that the examination took place after the Registrant had completed asking the questions from the iPad.
48. The Committee finds the following:
- a. The Registrant was not medically trained or qualified to conduct a physical examination. It is not clear to the Committee what he hoped to achieve through a medical examination for which he had no training. This undermines the credibility of the Registrant.
  - b. Furthermore, the Registrant set out to the Committee that his past experiences have made him overly cautious. The Committee considers this evidence to be in contradiction to undertaking a physical examination for which the Registrant was not qualified or competent to undertake.
  - c. Patient A went into the pharmacy for the sole purpose to obtain the morning after pill. It is unlikely that she would have consented to a physical examination with a community pharmacist for anything beyond the scope of obtaining the morning after pill. She was a training medical practitioner who is likely to have known to go to her GP, rather than a community pharmacist, if she had a lump and/or pain in her stomach. In her evidence, Patient A said that did not did not explain to the Registrant that there was anything wrong with her stomach (e.g. pain).
  - d. The Registrant's own explanation for the purpose of the examination is inconsistent, changing from checking whether the lump was sinister; Patient A complaining of pain; and to check if the lump would affect the absorption of the morning after pill.

49. Consequently, the Committee considers it more likely that not that the Registrant explained to Patient A that the purpose of the examination concerned the morning after pill and was either to do with the efficacy of the drug or he told her it was to check her hormones. As a result, the Committee considers that the issue of the lump arose during the course of the examination, as set out by Patient A.

*Scope of the examination*

50. In his interview with Boots, the Registrant explained that he told Patient A that he would examine her below the breast and above the private area. This is consistent with his police interview. This is also consistent with what Patient A was told by the Registrant initially, that he would only be checking her stomach.
51. The Committee reiterates that the Registrant was not medically trained or qualified to conduct a physical examination. It is not clear to the Committee what he hoped to achieve through a medical examination for which he had no training or qualification. The Registrant has stated on many occasions that he likes to go the extra mile for his patients, but it is not clear to the Committee how he can go the extra mile when he is not trained to do so. The Committee finds this undermines the credibility of the Registrant.
52. Witness D provided evidence that the examination room does not have the facilities for a physical examination given that the patient would have to lie down and the examination room does not have facilities to accommodate this. Again, this undermines the credibility as to why the Registrant would undertake any physical examination.
53. The Committee could not find any reason for Patient A to fabricate what happened to her and she was consistent in her evidence and during her live examination. Consequently, the Committee is more inclined to believe Patient A's version of events, which is supported by the following steps:
- a. Patient A was feeling vulnerable and was embarrassed to request the morning after pill.
  - b. Patient A told the Registrant that she had taken the morning after pill a number of years ago. At this point, the Registrant said "*we do things differently now*". The Committee considers the Registrant said this in order to check whether Patient A believed him.
  - c. When Patient A declined the chaperone, the Committee considers that the Registrant believed he had built some trust with Patient A.
  - d. When the Registrant asked Patient A "*can we do a bit lower*", the Committee considers the Registrant to be pushing at the boundaries of what she will permit him to do.
  - e. By recommending to Patient A to see a GP about the lump, the Committee considers that the Registrant is building further trust with Patient A.

- f. By drawing a heart shape over the top of her knickers and also touching parts of her skin around the top of her groin area when explaining where her womb was positioned, the Committee considers that the Registrant to, again, be pushing at the boundaries of what she will permit him to do.
  - g. By the time the Registrant slid one hand down to Patient A's knickers, she had frozen.
54. The Committee further considers Patient A's evidence to be credible as, following her exit from the pharmacy, she immediately called a friend to check whether she had been violated, told her boyfriend, and checked with Asda pharmacy what the EHC procedure was.

Allegation 1.2 – The Registrant touched Patient A's breasts

55. Patient A details that during the physical examination that the Registrant carried out on her, after he had examined her stomach, followed by him touching her pubic area, genitalia and or clitoris, he moved his hands up her body and said "*I need to do up here*". Patient A describes that the Registrant's hands moved from her stomach, he pushed his hands underneath her top, crop top and bra through the middle of her chest, sliding his hands to each side and cupping both breasts. Patient A states that this lasted a split second as he squeezed her breasts once before removing his hands from her clothing. Patient A explained that the Registrant looked at her face the whole time that he touched her breasts and must have seen the fear in her face and that she had frozen on the spot.
56. The Registrant denied touching Patient A's breasts, but admitted to feeling underneath her breast.
57. In light of this evidence, and paragraphs 50-54 above, the Committee considered that it is more likely than not that the Registrant touched Patient A's breasts.

Allegation 1.3 – The Registrant touched Patient A's pubic area and / or genitalia

58. Patient A explained that after the Registrant examined her stomach his hands went further down the centre of her stomach towards her vagina. Patient A explained that the Registrant "*pushed and prodded*" which made her say "*I need a wee. Don't press on my bladder*". In response, the Registrant confirmed he would not press on the bladder and showed her with his hands where the bladder was, he also drew a heart shape over the top of her knickers but also touching parts of her skin around the top of her groin area when explaining where her womb was positioned. Patient A states that after the Registrant explained where her bladder was "*out of nowhere*" said "*and here is where you vagina is*", and pointed to where it was. The Registrant then "*prodded*" around the area where her tattoo was just above her public region and asked if it hurt.
59. The Registrant denied putting his hands in Patient A's knickers and denied touching her genitals. He stated that Patient A stated that she did not know where her womb was



so he could have used that opportunity to touch her then when showing her where the womb was, but he did not, he just explained where it was. The Committee consider it implausible that Patient A did not know where her womb was given that she is medically trained and has had three children. Consequently, the Committee finds the Registrant's evidence to be undermined.

60. The Registrant provided in evidence that Patient A's statement sets out that the Registrant drew a heart on her knickers; however, in the criminal trial she said that it was drawn under her knickers. The Committee has given little, if any weight to this as it is hearsay evidence (the Committee does not have the transcript of the criminal trial) and the Registrant did not put this discrepancy to Patient A during cross examination at this Principal Hearing.
61. In light of this evidence, and paragraphs 50-54 above, the Committee considered that it is more likely than not that the Registrant touched Patient A's pubic area and/or genitalia.

Allegation 1.4 – The Registrant touched Patient A's clitoris

62. Patient A describes that after the Registrant drew a heart shape on her body to point out where her womb was positioned, he then slid one hand down to her knickers and touched her clitoris with his fingers. Patient A explained that he pressed on it and asked her if it hurt. Patient A explains that she thought the Registrant was going to "*put his fingers in*". Patient A also explains that his hand were down her knickers for a few seconds but it felt like minutes. She states that she froze when she was stood in front of him. The Committee further considered that if Patient A was going to fabricate her evidence, it is more likely than not that she would claim that the Registrant penetrated her vagina with her fingers, rather than say that this did not happen.
63. In light of this evidence, and paragraphs 50-54 and 59 above, the Committee considered that it is more likely than not that the Registrant touched Patient A's clitoris.

Allegation 1.5 – The Registrant touched Patient A's bum

64. Patient A describes that the Registrant moved his hands to the bottom of her back and requested to move the shorts a bit lower. Patient A said yes to this request when the Registrant exposed roughly half of her bum. Patient A explained that the Registrant felt around her bum with his hands.
65. The Registrant denied touching Patient A's private parts.
66. In light of this evidence, and paragraphs 50-54 above, the Committee considered that it is more likely than not that the Registrant touched Patient A's bum.

Allegation 2 – The touching in charge(s) 1.1, 1.2, 1.3, 1.4 and/or 1.5 above was not clinically justified

67. Witness B provided evidence that:

- a. No evidence has been provided by the Registrant of any training relevant to the condition(s) for which the examination was carried out. The registrant alleges to have examined the patient for a bump / lump which would not form part of an EHC consultation or pharmacy service.
  - b. The examination conducted by the Registrant would not have formed part of the EHC consultation, nor is it mentioned in any guidance including the FSRH Guideline for Emergency Contraception and CKS / NICE guidelines.
  - c. Witness B details that undertaking an intimate physical examination of a patient would be mostly outside the competency of a pharmacist who is not a prescriber.
  - d. As part of an EHC consultation, the question regarding malabsorption relates to whether a patient has a severe malabsorption syndrome such as Crohn's disease which may impair the efficacy of the EHC medication "*Severe malabsorption syndromes, such as Crohn's disease, might impair the efficacy of levonorgestrel*". At no point would a pharmacist (non-prescriber) physically examine a patient for this purpose.
  - e. There is no stomach examination to check hormones.
68. In his evidence before the Committee, the Registrant accepted that it is not essential to carry out physical examination prior to providing the EHC.
69. In light of this evidence, the Committee considered that it is more likely than not that the touching in charge(s) 1.1, 1.2, 1.3, 1.4 and/or 1.5 above was not clinically justified.
- Allegation 3 - The touching in charges 1.2, 1.3, 1.4 and / or 1.5 above was carried out without express consent to touch those areas
70. Patient A's evidence indicates that she provided consent for the Registrant to examine her stomach and her back. Patient A states that the Registrant did not ask if her could touch the other areas of her body.
71. The Registrant's evidence is that Patient A agreed to the consultation and he "*completely explained to her [...] what the examination would consist, I just obviously feel underneath your breast above your private parts. I said it's completely up to you and she, she goes it's fine.*" Further, Patient A refused a chaperone when one was offered by the Registrant.
72. The Committee considers that the Registrant's explanation did not explain to Patient A that the examination would entail the touching of her breasts, pubic area and/or genitalia, clitoris and bum. This aligns with the Registrant's explanation that he denied putting his hands in the female's knickers, he denied touching her genitals, breasts or private parts. However, as found above, the Registrant did touch Patient A's breasts, pubic area and/or genitalia, clitoris and bum.

73. In light of this evidence, the Committee considered that it is more likely than not that the touching in charge(s) 1.2, 1.3, 1.4 and/or 1.5 above was not carried out without express consent to touch those areas.

Allegation 4 - The touching in charges 1.2, 1.3, 1.4 and / or 1.5 above was sexual in nature and/or sexually motivated in that it was of areas that are physically intimate areas and/or it was carried out for sexual gratification

74. The definition of “sexual” in section 78 of the Sexual Offences Act 2003, sets out:

*“For the purposes of this Part (except section 71), penetration, touching or any other activity is sexual if a reasonable person would consider that (a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, or (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.”*

75. The case law of *The General Medical Council v Dr Raied Haris [2020] EWHC 2518 (Admin)* defines the term “sexual”:

*“47. In the present case it is in my judgement clear beyond argument that the intimate touching of Patients A and B was sexual and that answering a question as to the motivation of the toucher, the only available answer, is yes, the motivation must have been sexual. This is another way of saying the only reasonable inference from the facts is that the behaviour was sexual. This derives from;*

- a. The fact that the touching was of the sexual organs*
- b. The absence of a clinical justification*
- c. The absence of any other plausible reason for the touching.*

*48. The absence of any suggestion of accident and the absence of any consent gives further colour to the acts.”*

76. The legal test for sexual motivation which is set out in the case of *Basson v GMC [2018] EWHC 505*: “A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.”

77. The Registrant accepted that breasts, pubic area and/or genitalia, clitoris and bum are physically intimate areas. As set out in the Committee’s findings in relation to allegations 1.2 to 1.5, these areas on Patient A were touched by the Registrant.

78. The Registrant provided evidence that as he was wearing gloves, this makes any sexual motivation less likely. The Committee does not consider the wearing of gloves to be indicative either way whether touching was sexual in nature or sexually motivated.

79. As set out in the Committee’s findings in relation to allegation 2, the touching in allegations 1.1 to 1.5 was not clinically justified.

80. The Registrant explained that he carried out the examination in order to find the location of the lump and wanted to see whether it may affect the absorption, or whether the female would be able to take the drug or to check whether there was something else which was sinister which may require her to see a doctor. As set out in the Committee's findings in relation to allegation 2, the touching in allegations 1.1 to 1.5 was not clinically justified and the reason for the touching given by the Registrant is not plausible to the Committee. There is no suggestion that the touching of breasts, pubic area and/or genitalia, clitoris and bum was accidental.
81. The Registrant has said that he was not physically attracted to Patient A in any way or had any sexual inclination of any sort towards her. The Committee considers that, given the reasons set out in paragraphs 77-80, it is more likely than not, that the touching of the areas set out in allegation 1.2 to 1.5 was sexual in nature and sexually motivated. Furthermore, for the same reasons, the Committee considers that the physical examination of these intimate areas was carried out for sexual gratification.
82. In light of this evidence, the Committee considered that it is more likely than not that the touching in charge(s) 1.1, 1.2, 1.3, 1.4 and/or 1.5 above was sexual in nature in that it was of areas that are physically intimate areas and was carried out for sexual gratification.

### **Third application to admit further evidence**

83. Following the Committee's finding of facts, the Registrant made another application to admit evidence in the form of new character references following the Committee's findings on fact. He submitted that:
  - a. These character references were important to show that his current fitness to practise is not impaired.
  - b. These character references would provide evidence of his current character.
84. The Council opposed the application on the basis that exceptional circumstances have not been met as:
  - a. It needs to verify whether these character references can be relied upon.
  - b. The Registrant had ample time to gather the references prior to the Principal Hearing.
85. The Committee noted rule 18(5) which set out: *"Any document which has not been served on the secretary by the end of [No later than 9 days before the Monday of the week in which the hearing is to take place] is, except in exceptional circumstances, not to be admitted into evidence at the hearing."* Should the Committee consider that the *"exceptional circumstances"* have been met, then the evidence need to be relevant and fair (Rule 24(2)).

86. The Committee accepted the application as “*exceptional circumstances*” had been met on the basis that the circumstances have changed following the Committee’s finding of fact on the allegations. The procedure at this stage is unknown to the Registrant who is self-representing and this is the first time that the allegations have been proved in any court/tribunal.
87. The evidence, as described, is relevant. To further ensure that relevance is maintained, the Committee direct that any referees must be informed that the allegations have been found to be proved. In order to maintain fairness, the Committee will attach the appropriate weight to the material provided.

### **Submissions on Grounds and Impairment**

88. Having found the particulars of allegation proved, the Committee went on to consider whether they amounted to misconduct and, if so, whether the registrant’s fitness to practise is currently impaired.
89. The Registrant provided the following evidence on grounds and impairment:
  - a. He deeply regrets having conducted the physical examination on Patient A.
  - b. He accepts that a physical examination is not part of the supply of EHC and only conducted a physical examination following Patient A telling him about the lump in her stomach.
  - c. Apart from this incident, he has received no complaints, convictions or arrests.
  - d. He has worked in a garage now for some time, which has female employees, and has never received a complaint from there.
  - e. Throughout his career, he has provided person-centred care. He communicates effectively with patients and has maintained his professionalism.
  - f. His professional judgement was impaired when undertaking the physical examination of Patient A. He denies that he touched Patient A, as outlined in allegations 1.2 to 1.5.
  - g. He has deeply reflected what occurred over the past four years. He understands what went wrong and would never conduct such a physical examination again in the future. He would never put himself or his family in such a vulnerable position again in the future.
  - h. He is not currently impaired as found by a previous fitness to practise hearing committee which re-instated his licence, albeit with conditions.
  - i. The past four years have been very difficult for the Registrant. He has been without direction.

- j. Apart from conducting the examination, the Registrant cannot accept the Committee's findings as he did not do anything wrong. If someone had done what was alleged in the allegations, the Registrant said that this would be extremely serious and gross misconduct.
- k. The Registrant considers that he breached standard 5 of the Council's Standards for Pharmacy Professionals (May 2017), in that he did not use his professional judgement when undertaking the physical assessment of Patient A, but he denies that he breached the following standards:
  - i. Standard 1 – Pharmacy professionals must provide person-centred care;
  - ii. Standard 2 – Pharmacy professionals must work in partnership with others;
  - iii. Standard 3 – Pharmacy professionals must communicate effectively;
  - iv. Standard 4 – Pharmacy professional must maintain, develop and use their professional knowledge and skills;
  - v. Standard 6 – Pharmacy professionals must behave in a professional manner; and
  - vi. Standard 9 – Pharmacy professionals must demonstrate leadership.
- l. The Registrant does not consider that his conduct put Patient A at risk of harm, as he had no intention to put her at risk of harm. The Registrant considers that no members of the public would be put at risk of harm in the future as he has learned a valuable lesson and would not put himself or the public in such a situation in the future.
- m. The Registrant understands how his conduct could have impacted upon the pharmacy profession, but considers his actions were a mistake, and when mistakes are made, they are reflected upon and lessons are learned where things went wrong to ensure that the same mistakes are not made again.
- n. The Registrant does not consider that his actions negatively impacted upon the pharmacy profession, as he was just going the extra mile for the patient. The Registrant accepts that his professional judgement was not correct at the time, but that he did not do anything which impacted upon the pharmacy profession or put the profession's reputation at risk.
- o. In order for such an incident to never occur again, the Registrant has reflected heavily, spoken to friends and pharmacists, and wanted to understand things. He now understands the scope and limits of the profession. He understands that no physical examinations can take place and that he should signpost patients to see the correct healthcare professional.
- p. If the Registrant had made anyone feel uncomfortable, he truly apologises to every person impacted by his conduct. This includes family members and work

colleagues. This incident has not only been a learning experience for himself, but also for other pharmacists.

- q. He has completed CPD courses in order to keep up to date with the pharmacy profession.
90. In relation to the misconduct, the Council submitted that the conduct, as set out in the facts, took place during the course of the Registrant's professional practice. The Registrant's conduct, as set out within the particulars of allegation, falls far below the standards expected of a registered pharmacy professional. It is submitted that the Registrant's particularised conduct breached the Standards for pharmacy professionals dated May 2017, in particular:
- a. Standard 1 – Pharmacy professionals must provide person-centred care;
  - b. Standard 2 – Pharmacy professionals must work in partnership with others;
  - c. Standard 3 – Pharmacy professionals must communicate effectively;
  - d. Standard 4 – Pharmacy professional must maintain, develop and use their professional knowledge and skills;
  - e. Standard 5 - Pharmacy professionals must use their professional judgement;
  - f. Standard 6 – Pharmacy professionals must behave in a professional manner; and
  - g. Standard 9 – Pharmacy professionals must demonstrate leadership.
91. The Registrant breached Standards 1 to 6 as he failed to effectively explain to the patient why he considered an examination was necessary to enable the patient to provide informed consent to the procedure which ultimately led to her receiving the EHC. He failed to safeguard Patient A and respect her dignity. Further, the care received by Patient A falls outside of the scope of the pharmacy professional's practice and the Registrant's competence.
92. The deliberate, unconsented touching of the sexual parts of a patient's body without clinical justification which takes place within a therapeutic/pharmacy setting signifies the imbalance of power between pharmacist and patient. Conduct which is defined as sexual/carried out for sexual gratification as addressed above must be considered to amount to misconduct.
93. In relation to impairment, the Council submitted:
- a. The Registrant does not accept the Committee's complete findings and does not think that he caused harm to Patient A. Consequently, there is a risk of the Registrant repeating his actions as set out in the allegations.
  - b. The Registrant's conduct presented an actual, and continues to present a potential risk to patients/members of the public. The examination that the Registrant conducted for the supply of EHC was not deemed necessary according to the NICE guidance on EHC, and the examination should not have been conducted by a

pharmacist. The Registrant, from his responses, appears to accept that he carried out an examination, but states that he did it to be helpful. The Council submits that if the Registrant is not alive to the fact that the entire examination was not clinically justified and fell outside the scope of his skills and training, then there is a risk of repetition which presents as a potential risk to members of the public.

- c. The Registrant's conduct brings the pharmacy profession into disrepute. Members of the public would be alarmed to learn that a pharmacist had carried out a physical examination where they lacked the relevant skills or training. They would specifically be alarmed to learn that the examination involved was not clinically justified, the touching of intimate and private parts of the body took place where a discussion did not take place prior to touching these parts of the body and for consent to be provided. The Registrant does not consider that he has brought the profession into disrepute, only that he breached Standard 5 of the Standards for pharmacy professionals dated May 2017, even though he accepts that the allegations are serious.
  - d. The breaches of the Standards detailed above demonstrate that the Registrant has breached fundamental principles of the pharmacy profession.
  - e. In terms of remediation, the Registrant from the material presented by the Council, only appears to accept that he examined Patient A. He denies that he touched the private and intimate parts of her body, therefore, that the touching was sexual or sexually motivated (for sexual gratification). The Registrant to date, has not provided any evidence to support an understanding of why his actions were inappropriate, what he has learned since the allegations were raised and what he would do differently in the future. The Council submits that remediation is incomplete and still yet to be addressed by the Registrant.
  - f. A finding of current impairment is required in order to protect members of the public, to uphold the public confidence in the profession and the reputation of the profession. This finding will also uphold professional standards of behaviour.
94. In relation to the misconduct, the Registrant submitted:
- a. That there was misconduct to the extent that he should not have undertaken a physical examination as it was not clinically justified.
  - b. By conducting the physical examination, his professional judgement has been impaired which can lead to the profession being looked at in a negative manner.
95. In relation to impairment, the Registrant submitted:
- a. The character references corroborate that the Registrant is an individual who provided patient centred care, made patient care the priority, and goes the extra mile to help patients. Patients still ask for the Registrant by name even in pharmacies that he has not worked in for three years. This is because he cherishes his relationships with his patients.



- b. He readily apologises to everyone involved with the allegations. He did not apologise beforehand to witnesses as he was advised not to contact witnesses prior to his criminal trial and has maintained the same approach prior to this Principal Hearing.
- c. He apologises to Patient A, but maintains that he did not touch any of her private areas or that the physical examination was done for sexual gratification. He cannot apologise for something that was not done.
- d. He has demonstrated how his practise is not currently impaired or would be impaired in the future.
- e. He has continued to keep up to date with the pharmacy profession. He has continued training with his wife (who is also a pharmacist). He has undertaken EHC training with her and understands what he should be doing going forward. He would never conduct a physical examination again or do anything that would bring the profession into disrepute. He would conduct a verbal consultation and then signpost the patient to the correct healthcare profession.
- f. A previous fitness to practise committee reinstated the Registrant's licence (albeit with conditions). He tried to get a pharmacist job, but was unable due to the conditions. The Registrant submitted that this showed dedication to pharmacy.
- g. He understands that he may need to become second pharmacist or a volunteer pharmacist in order to get back into practice.

### **Decision on Grounds**

- 96. The Committee took account of the guidance given to the meaning of *"fitness to practise"* in the Council's publication *"Good decision-making"* (Revised March 2024).
- 97. The Committee accepted and applied the following definition of *"misconduct"*:
 

*"...some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word 'professional' which links the misconduct to the profession. Secondly, the misconduct is qualified by the word 'serious'. It is not any professional misconduct which will qualify. The professional misconduct must be serious."*
- 98. The Committee also took into account the observation of J Collins in *Nandi v GMC [2004] EWHC 2317 (Admin)* that: *"The adjective 'serious' must be given its proper weight and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners."*

99. The Committee considered that Registrant's actions reached the threshold of misconduct as he:
- a. Carried out a physical examination of a patient which he was not competent and / or trained to perform;
  - b. Carried out a physical examination of a patient which was not clinically justified;
  - c. Touched a patient's breasts without her consent;
  - d. Touched a patient's pubic area and/or genitalia without her consent;
  - e. Touched a patient's clitoris without her consent;
  - f. Touched a patient's bum without her consent; and
  - g. Carried out all the above with sexual motivation for sexual gratification.
100. Further, such actions damage public confidence in the profession, as it would convey a degree of opprobrium to the ordinary intelligent citizen (*Shaw v General Osteopathic Council [2015] EWHC 2721 (Admin)*).
101. The Committee considered whether the Registrant had breached any of the Council's Standards for Pharmacy Professionals (May 2017). The Committee determined that there had been a breach of the following Standards as a result of the misconduct:
- a. Standard 1 – Pharmacy professionals must provide person-centred care (in particular, respect and safeguard the person's dignity);
  - b. Standard 2 – Pharmacy professionals must work in partnership with others (in particular, work with the person receiving care);
  - c. Standard 3 – Pharmacy professionals must communicate effectively;
  - d. Standard 4 – Pharmacy professional must maintain, develop and use their professional knowledge and skills (in particular, recognise and work within the limits of their knowledge and skills, and refer to others when needed);
  - e. Standard 5 – Pharmacy professionals must use their professional judgement;
  - f. Standard 6 – Pharmacy professionals must behave in a professional manner (in particular, are trustworthy and act with honesty and integrity and treat people with respect and safeguard their dignity); and
  - g. Standard 9 – Pharmacy professionals must demonstrate leadership (in particular, do not abuse their position or set out to influence others to abuse theirs).
102. The Registrant breached Standards 1-6 and 9 (individually and as a whole) as he failed to effectively explain to the patient why he considered an examination was necessary to enable the patient to provide informed consent. The Registrant was not working with Patient A. By conducting the examination in the way he did, he failed to safeguard Patient A and respect her dignity. Further, the care required by Patient A falls outside of the scope of the pharmacy professional's practice and the Registrant's competence,

professional knowledge and skills. In conducting the examination, the Registrant failed in the use of his professional judgement, failed to behave in a professional manner (in particular that he was trustworthy and acted with honesty and integrity), and abused his position as a pharmacist to abuse Patient A's position as a patient.

103. 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 establish that the Registrant's fitness to practise is impaired (Rule 24(11)).
104. Accordingly, the Committee concluded that, in its judgement, the grounds of misconduct are established.

### **Decision on Impairment**

105. Having found that the particulars of allegation amounted to misconduct, the Committee went on to consider whether the Registrant's fitness to practise is currently impaired.
106. At the outset, the Committee considered the Registrant's insight, remorse, and remediation.
107. The Committee considers that the Registrant has limited insight due to the following:
  - a. He does not consider that his conduct put Patient A at risk of harm.
  - b. Although he accepted that he undertook the examination on Patient A, he only accepts that was not competent or trained to perform a physical examination, and that this was not clinically justified.
  - c. He further accepts that breasts, pubic area and/or genitalia, clitoris or bum are intimate areas and that the touching of these areas by a pharmacist to be extremely serious and gross misconduct.
  - d. He does not accept that: he touched her breasts, pubic area and/or genitalia, clitoris or bum; Patient A did not express consent for the Registrant to touch these areas; or that the touching was sexual in nature, sexually motivated or carried out for sexual gratification.
  - e. The Registrant does not consider that his actions negatively impacted upon the pharmacy profession.
108. The Committee considers that the Registrant has limited remorse. Although he has apologised to all those involved with the allegations, the Committee considers that the apology is insufficient as it does not cover all the proven allegations, as he does not accept the matters set out in paragraph 107(c) above.
109. The Committee considers that the Registrant has completed limited remediation, given that:

- a. He has recently completed an EHC course with his wife (although he has not provided evidence of this to the Committee).
  - b. He has had four years since the allegations to undertake appropriate training and take action which would counter the allegations. This has not been done.
110. The Committee considered whether the particulars found proved show that actions of the Registrant:
- a. present an actual or potential risk to patients or to the public;
  - b. have brought, or might bring, the profession of pharmacy into disrepute;
  - c. have breached one of the fundamental principles of the profession of pharmacy;  
or
  - d. mean that the integrity of the Registrant can no longer be relied upon.

Whether the Registrant's conduct or behaviour present an actual or potential risk to patients or to the public

111. Given the limited insight, limited remorse expressed, and limited remediation completed by the Registrant, the Committee considers that the Registrant's conduct or behaviour presents an actual or potential risk to patients or to the public. In particular, the Committee was concerned that the Registrant provided evidence that he does not consider that this conduct put Patient A at risk of harm or put patients at risk of harm in the future, as he had no intention to put Patient A at risk of harm. The Committee considers that this limited insight, in of itself, presents an actual or potential risk to patients or to the public.

Whether the Registrant's conduct or behaviour have brought, or might bring, the profession of pharmacy into disrepute

112. The Committee considered that the Registrant's misconduct has brought the profession of pharmacy into disrepute on the basis that:
- a. He conducted a physical examination that was not clinically justified, and that he was not competent or trained to perform; and
  - b. During this examination, he touched a patient in intimate areas, without consent, which was sexual in nature and sexually motivated for sexual gratification.
113. Given the limited insight, limited remorse expressed, limited remediation completed by the Registrant, and risk of repetition, as set out in paragraph 111 above, the Committee considers that the Registrant's conduct or behaviour might bring the profession of pharmacy into disrepute in the future.
114. In particular, the Committee was concerned that the Registrant provided evidence that he does not consider that his actions negatively impacted upon the pharmacy profession. The Committee considers that this limited insight, in of itself, might result in the Registrant bringing the profession of pharmacy into disrepute in the future.

Whether the Registrant's conduct or behaviour have breached one of the fundamental principles of the profession of pharmacy

115. For the reasons set out in paragraph 112 above, the Committee considered that the Registrant's conduct and behaviour has breached one of the fundamental principles of the profession of pharmacy, namely the requirements to act within the scope of your practice and not to violate a patient.
116. Given the limited insight, limited remorse expressed, limited remediation completed by the Registrant, and risk of repetition, as set out in paragraph 111 above, the Committee considers that the Registrant's conduct or behaviour might breach one of the fundamental principles of the pharmacy profession in the future.
117. In particular, the Committee was concerned that the Registrant provided evidence that he does not consider that his actions negatively impacted upon the pharmacy profession. The Committee considers that this limited insight, in of itself, might result in the Registrant breaching one of the fundamental principles of the pharmacy profession in the future.

Whether the Registrant's conduct or behaviour show that the integrity of the Registrant can no longer be relied upon

118. The Committee considers that the Registrant's conduct or behaviour shows that the integrity of the Registrant can no longer be relied upon. He was not honest with Patient A in inviting her for a physical examination that was not needed nor that he was competent or trained to perform.
119. Given the limited insight, limited remorse expressed, limited remediation completed by the Registrant, and risk of repetition, as set out in paragraph 111 above, the Committee considers that the Registrant's conduct or behaviour shows that the integrity of the Registrant can no longer be relied upon.

Committee's conclusion on impairment

120. In light of the above, the Committee considered the Registrant's fitness to practise to be impaired on the personal element.
121. Further, members of the public would be alarmed to learn that a pharmacist had carried out a physical examination where they lacked the relevant competence or training. They would specifically be alarmed to learn that the examination involved was not clinically justified, the touching of intimate and private parts of the body took place where a discussion did not take place prior to touching these parts of the body and for consent to be provided. Consequently, the Committee considered the Registrant's fitness to practise to be impaired on the wider public interest element, namely maintaining public confidence in the pharmacy profession and upholding professional standards.

**Sanction**

122. Having found impairment, the Committee has gone on to consider the matter of sanction. The Committee's powers are set out in Article 54(2) of the Pharmacy Order 2010. The Committee should consider the available sanctions in ascending order from least restrictive, take no action, to most restrictive, removal from the register, in order to identify the appropriate and proportionate sanction that meets the circumstances of the case.
123. The purpose of the sanction is not to be punitive, though a sanction may in fact have a punitive effect. The purpose of the sanction is to meet the overarching objectives of regulation, namely the protection of the public, the maintenance of public confidence and to promote professional standards. The Committee is therefore entitled to give greater weight to the public interest over the Registrant's interests.
124. The Committee had regard to the Council's "*Good decision making: Fitness to practise hearings and outcomes guidance*", published in March 2024, to inform its decision.
125. On behalf of the Council, Ms Tomlinson submitted:
  - a. The aggravating factors in this matter consist of the following:
    - i. The Committee found that the Registrant had limited insight, limited remorse expressed, and had completed limited remediation;
    - ii. The Registrant provided evidence that he does not consider that his conduct put Patient A at risk of harm;
    - iii. The Registrant provided evidence that he does not consider that his conduct negatively impacted upon the pharmacy profession;
    - iv. The Registrant was not honest with Patient A in inviting her for a physical examination that was not clinically justified, or that he was competent or trained to perform;
    - v. The conduct was carried out in a therapeutic environment which led to an imbalance of power between the Registrant and Patient A;
    - vi. The examination placed the patient in a vulnerable state where she was anxious;
    - vii. The touching of Patient A's private and sexual parts of her body led to a breach of trust between patient and pharmacist; and
    - viii. The Registrant does not accept the Committee's findings that: he touched her breasts, pubic area and/or genitalia, clitoris or bum; Patient A did not express consent for the Registrant to touch these areas; or that the touching was sexual in nature, sexually motivated or carried out for sexual gratification.
  - b. The mitigating factors in this matter consist of the following:

- i. The Registrant admits that he carried out a physical examination, but that only consisted of touching Patient A's stomach with her consent; and
    - ii. The Registrant admits that he should not have undertaken the physical examination.
  - c. The recommended sanction is removal. Any touching of a patient which is sexual or sexually motivated for sexual gratification is a gross breach of trust and professional boundaries. The touching of imitate areas of a patient's body where there is no clinical justification for it is considered to amount to conduct which is incompatible with continued registration with the Council and therefore, should be removed. Members of the public would be alarmed to learn that a pharmacist had carried out a physical examination where they lacked the relevant competence or training.
126. The Registrant submitted that his conduct does not necessitate his removal from the Council's Register. This is because:
- a. He has demonstrated remorse for his conduct;
  - b. He had remediated and reflected to ensure that the same mistakes would not happen again;
  - c. Although he has completed EHC training, it has been difficult to provide evidence of this. He will undertake courses to ensure that similar errors do not occur in the future;
  - d. He still considers that he did not touch Patient A's breasts, pubic area and/or genitalia, clitoris or bum. Therefore, it is difficult to remediate for something that has not been done. He does agree that if a pharmacist did touch a patient's breasts, pubic area and/or genitalia, clitoris or bum, then this would constitute severe misconduct and lead to a severe punishment. He further understands how such conduct would be of concern to the public; and
  - e. He can be a great asset to pharmacy and would be content with conditions being placed on his practice.
127. The Committee first considered what, if any, mitigating and aggravating factors there may be. The Committee considered the mitigating and aggravating factors as set out by the Council at paragraph 125 above to be complete, comprehensive and adopts these.
128. The Committee also took into account the character references placed by the Registrant before the Committee.
129. The Committee considers that the Registrant's actions, as found proved, amount to serious sexual misconduct. In light of this, the Committee finds that taking no action, issuing advice or issuing a warning would not adequately protect the public. Further, these sanctions would not adequately meet the wider public interest of maintaining

public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.

130. The Committee next considered the imposition of conditions of Registration. A conditions of registration Order would allow the Registrant to practise albeit with restrictions. However, the Committee did not consider that conditions would be appropriate as no relevant or proportionate conditions could be formulated given the Registrant's limited insight, limited remorse and the limited remediation completed. Further, the Committee did not consider that conditions are the appropriate vehicle to protect the public where a Registrant does not accept the findings of the Committee.

131. The Committee next considered whether suspension would be a proportionate sanction. The Committee noted the Council's 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."*

132. The Committee considered that a suspension may have been appropriate if the Registrant had shown more than limited insight, expressed more than limited remorse, and had completed more remediation. The Committee was particularly concerned that the Registrant:

- a. does not accept the Committee's findings that: he touched her breasts, pubic area and/or genitalia, clitoris or bum
- b. provided evidence that he does not consider that his conduct put Patient A at risk of harm;
- c. provided evidence that he does not consider that his conduct negatively impacted upon the pharmacy profession; and
- d. was not honest with Patient A in inviting her for a physical examination that was not clinically justified, or that he was competent or trained to perform.

133. Furthermore, the Committee did not consider a suspension to be an appropriate sanction given that the conduct was carried out in a therapeutic environment which led to an imbalance of power between the Registrant and Patient A. The touching of Patient A's private and sexual parts of her body led to a breach of trust between patient and pharmacist.

134. The Committee considered that, given the above, a suspension would not instil public confidence in the profession. Suspension would, therefore, not adequately protect the public or sufficiently uphold public confidence, or maintain professional standards.



135. Given the above conclusions, and taking account of the seriousness of the matter, the Committee concluded that the appropriate and proportionate sanction was one of removal. The Committee considered that removal was the only sanction that could meet the public interest in this case.

136. In reaching its decision on removal, the Committee took into account the Council's "*Good decision making: Fitness to practise hearings and outcomes guidance*", published in March 2024. In particular, the Committee noted paragraph 6.3 to be relevant to the Registrant's misconduct. Paragraph 6.3 sets out in pertinent part:

*"The GPhC believes that some acts of sexual misconduct will be incompatible with continued registration as a pharmacist or pharmacy technician. Removal from the register is likely to be the most appropriate outcome in these circumstances, unless there is evidence of clear, mitigating factors that cause a committee to decide that such an outcome is not appropriate. The misconduct is particularly serious if:*

- *there is an abuse of the special position of trust that a professional has"*

137. The Committee also took note of the case of *General Medical Council v Khetyar [2018] EWHC 813 (Admin)*. Dr Khetyar's misconduct related to three young females: Nurse A, Patient B, and Patient C. Nurse A was a nurse at Caithness General Hospital, where Dr Khetyar was working in October 2014. The facts proved comprised a series of minor episodes on 19 October 2004, amounting to sexually motivated pestering or harassment. It was an isolated incident, eight years before the much more serious misconduct. In July 2012 and July 2013, respectively, Dr Khetyar sexually assaulted Patients B and C in similar ways. As regards Patient B, on 5 July 2012, Dr Khetyar was undertaking a locum shift at St Peter's Hospital in Chertsey. Patient B had been admitted the previous day. The tribunal found that, in relation to Patient B and in relation to Patient C on 3 July 2013, when Dr Khetyar was working at High Wycombe Hospital, he fondled the breasts of both women patients "*in the guise of a medical examination*". The tribunal heard and accepted expert evidence that Dr Khetyar's examination of both women formed no part of any legitimate medical examination called for by their presentation. Dr Khetyar also said nothing to Patient C before or during his actions. The tribunal concluded that there was no motivation for his actions other than sexual motivation. The tribunal suspended Dr Khetyar for a period of 12 months with a review. The High Court quashed the sanction of the tribunal and directed that Dr Khetyar's name be erased from the register. The High Court said that a medical examination properly indicated and conducted may involve intimate touching. Conducting such an examination without a chaperone or without adequate explanation to the patient is apt to create real concern in the mind of the patient as to propriety of what is happening. That, in turn, is apt to undermine public confidence in the profession.

138. Like Dr Khetyar, the Registrant committed sexual misconduct "*in the guise of a medical examination*". Although Dr Khetyar committed such misconduct on two occasions, the

Registrant is found to have touched Patient A's pubic area and/or genitalia, clitoris and bum in addition to her breasts. In both cases, the physical examination formed no part of any legitimate medical examination, was undertaken without a chaperone, and that the actions were sexually motivated.

139. The Committee therefore directs that the Registrar remove the Registrant from the Council's Register.

### **Interim Order**

140. The Committee considered that, pursuant to Article 56(10) of the Pharmacy Order 2010, as it has been determined that the Registrant's fitness to practise is impaired, that the interim order which was in place is revoked.

### **Decision on Interim Measure**

141. Ms Tomlinson 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 sexual misconduct 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. The Registrant did not comment on the application.
142. In considering Ms Tomlinson's application, the Committee took account of its decision to remove 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.
143. The Committee has found that there remains a risk that the Registrant might repeat his conduct, if permitted to return to work unrestricted. It accepts the submissions of Ms Tomlinson that his unrestricted registration would have 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.
144. 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.
145. 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.
146. This concludes the determination.