

**General Pharmaceutical Council**

**Fitness to Practise Committee**

**Principal Hearing**

Remote videolink hearing

**Monday 15 – Wednesday 17 July 2024**

**PUBLIC DETERMINATION**

<b>Registrant name:</b>	Michael James McGinty
<b>Registration number:</b>	2036097
<b>Part of the register:</b>	Pharmacist
<b>Type of Case:</b>	Misconduct/Conviction/ Health
<b>Committee Members:</b>	Lubna Shuja (Chair) Jignesh Patel (Registrant member) Carolyn Tetlow (Lay member)
<b>Clinical Adviser:</b>	Dr Jennifer Bearn
<b>Committee Secretary:</b>	Adam Hern
<b>Registrant:</b>	Present and represented by Martin Hadley, Solicitor of VHS Fletchers
<b>General Pharmaceutical Council:</b>	Represented by Kay-Marie Tomlinson, Case Presenter
<b>Facts proved by admission:</b>	1, 2 and 3
<b>Fitness to practise:</b>	Currently Impaired
<b>Outcome:</b>	Suspension Order for 6 months
<b>Interim measures:</b>	Interim Suspension Order

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 15 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,*

1. *On 28 September 2021, were convicted at South Shields Magistrates' Court of:*

1.1 *On Sunday 1st August 2021 at Gateshead drove a motor vehicle, namely a Jaguar XF on a road, namely the A1 Team Valley South Bound, after consuming so much alcohol that the proportion of it in your breath, namely 99 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit. Contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.*

2. *You have a medical condition as set out in Schedule 1.*

3. *On 28 March 2023, whilst performing a locum duty at Boots Pharmacy Bo'Ness, 60 South St, Bo'ness EH51 9HA ("the pharmacy"):*

3.1 *Attended work as a sole pharmacist, while in an unfit state.*

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

- a) Conviction;*
- b) REDACTED*
- c) Misconduct.*

*Amended Schedule 1:*

1. *REDACTED*

## **Documentation**

- GPhC Hearing Bundle (94 pages)
- GPhC Combined Statement of Case and Skeleton Argument dated 4 July 2024
- The Registrant's Bundle (15 pages)
- The Registrant's CV (3 pages)
- The Registrant's Skeleton Argument and Statement of Case dated 5 July 2024

## **Witnesses**

- REDACTED
- The Registrant – gave evidence at grounds and impairment stage

## Determination

### Introduction

1. This is the written determination of the Fitness to Practise Committee at the General Pharmaceutical Council ('the Council').
2. The matter concerns Michael James McGinty ('the Registrant') who is registered with the Council as a Pharmacist, registration number 2036097.
3. 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").
4. 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.
5. The Committee also had regard to the guidance contained in the Council's '*Good decision making: Fitness to practise hearings and outcomes guidance*' (March 2024).
6. 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**

7. A letter dated 21 May 2024 from the Council headed 'Notice of Principal Hearing' was sent to the Registrant. No issue was taken by either party with service. The Committee was satisfied that there had been good service of the Notice in accordance with Rules 3 and 16.

### **Application to amend the Particulars of the Allegation**

8. The Committee heard an application from Ms Tomlinson, on behalf of the Council, under Rule 41 of the Rules to amend Particular 1.1 and Schedule 1 of the Allegation. The proposed amendments to Particular 1.1 were to correct typographical errors. Ms Tomlinson proposed the word "*proportionate*" be amended to "*proportion*" and the word "*scribed*" be amended to "*prescribed*". The Committee also noted there was a typographical error in relation to the word "*limited*" and proposed this be amended to "*limit*". Ms Tomlinson agreed this amendment.
9. In relation to Schedule 1, Ms Tomlinson sought to amend the medical condition from "*REDACTED*" to "*REDACTED*" to reflect the diagnosis in the most recent medical report dated 17 June 2024. REDACTED Mr Hadley, on behalf of the Registrant had no objection to the proposed amendments. He conceded there would be no prejudice to the Registrant by the amendments and the slightly different diagnosis did not impact on the Registrant's position.
10. The Committee noted the amendments were agreed. They related to minor typographical errors which were required to replicate the wording in the Certificate of Conviction, and to reflect the Registrant's updated medical condition. There would be no prejudice against the Registrant as he was already aware of the wording in the Certificate of Conviction. He had been provided with a copy of the updated medical report and email from the medical expert, as well as notice of the proposed amendments in advance. It was in the interests of justice and of a fair hearing that

the Particulars of the Allegation should accurately reflect the documents relied upon. The Committee therefore granted the application for the proposed amendments.

### **Application for the hearing to be held in Private**

11. The Committee heard an application from Ms Tomlinson under Rule 39(2) for all matters relating to the Registrant's health to be heard in private. She submitted evidence relating to the remaining issues could be heard in public, as the public interest in holding those parts of the hearing in public outweighed the Registrant's interest.
12. Mr Hadley agreed with the application. He noted there were observers attending the hearing who were new members of the Council's staff attending for training purposes. Mr Hadley confirmed the Registrant did not object to those staff members remaining during the private parts of the hearing as the Registrant acknowledged people needed to be developed and learn. Mr Hadley was also mindful that the Council colleagues were bound by a duty of confidentiality in any event, which would continue should they leave the Council's employment in the future.
13. The Committee noted that the Particulars of the Allegation related to three distinct areas, one of which concerned the Registrant's health. The information about the Registrant's conviction was already in the public domain and there was no reason why that part of the hearing could not be held in public. The incident on 28 March 2023 was alleged to have taken place in a pharmacy setting when other pharmacy professionals and members of the public were present. It was therefore in the public interest for that part of the hearing to be in public. In relation to the Registrant's health, these were issues impacting on his privacy and right to a private life which he was entitled to maintain. Rule 39(2) stated that any health allegation should be heard in private unless there were good reasons otherwise. In this case the Committee noted both parties agreed that matters relating to the Registrant's should be heard in private. It therefore granted the application for those parts of the hearing to be in private.

## **Registrant's response to Particulars of allegation**

14. The Registrant admitted Particulars 1, 2 and 3 of the Allegation. Accordingly, the Committee found Particulars 1, 2 and 3 proved under Rule 31(6) of the Rules.
15. The Committee went on to receive evidence and submissions in relation to the statutory grounds for impairment and whether the Registrant's fitness to practice is currently impaired.

## **Background**

### Particular 1 – Conviction of 28 September 2021

16. On 3 October 2021, the Council received a self-declaration from the Registrant stating that he had been stopped by the police on 1 August 2021, breathalysed and subsequently charged under section 5(1)(a) of the Road Traffic Act 1988. A copy of the police report and Certificate of Conviction were obtained. The Certificate of Conviction confirmed that the Registrant was convicted on 28 September 2021 at South Shields Magistrates' Court for driving a motor vehicle on 1 August 2021 "*after consuming so much alcohol that the proportion of it in your breath, namely 99 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit. Contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.*"
17. The Registrant was disqualified from driving for 24 months and ordered to pay a fine of £500.

### Particular 3 – Attendance at work on 28 March 2023

18. On 28 March 2023 at about 8.55am, the Registrant attended Boots Pharmacy, 60 South Street, Bo'ness, EH51 9HA ("the Pharmacy") as the regular locum pharmacist.
19. A pharmacy assistant, Colleague A, working at the Pharmacy noticed the Registrant:

*"...was very unlike himself. He is usually so upbeat and chatty, but on that day he was mumbling and only said a few words at a time. He was swaying and*

*had to hold the counter to support himself standing up. I was unsure what was wrong with him but felt too awkward to approach him and ask him if everything was OK....”*

20. Colleague A described the Registrant answering the phone but not speaking to whoever was on the phone. She stated that after she had served a customer and came back into the dispensary, the phone call was still going on with the phone on the desk but not on mute, while the Registrant was standing looking at the computer not doing or saying anything.
21. At 9.05am, the Pharmacy’s delivery driver arrived, Colleague B. She described the Registrant as unsteady on his feet. She saw him drop something on the floor but then he had difficulty picking it up. She stated that she was concerned about leaving Colleague A, who was quite young, alone with the Registrant so decided to stay until the other pharmacy assistant arrived. Colleague B then left to continue with her deliveries but stated that when she returned an hour later, she saw that the Pharmacy was closed.
22. Another pharmacy assistant, Colleague C, arrived at 9.15am, and said that the Registrant was not *“his usual chatty and professional self. He couldn’t stand upright and he was mumbling.”* She described smelling alcohol coming from him and said that he was trying to sign the Responsible Pharmacist Log but had been stood for 15 minutes looking at it. She said she was not comfortable with the Registrant checking medication and called the Manager, Colleague D, who told her to close the shop and await her arrival. Colleague C stated that she tried to take the Registrant into the staff room so that she could ask customers to leave. She described walking behind him *“to try and hide him. I didn’t want customers to see him stumbling and swaying.”* Once he was in the staff room, she told customers that they had to close the Pharmacy as the pharmacist was unwell. Colleague C stated that whilst she was doing this, the Registrant came out of the staff room and was looking at the Responsible Pharmacist Log again. She then told him that she was not comfortable with the way he was and



that she had closed the shop. Colleague C described the Registrant's white cream jacket as "*filthy*" which was unusual as he was normally smartly dressed.

23. Colleague C stated the Registrant was sent home in a taxi. She stated that the following day he attended the Pharmacy again and apologised "*for yesterday*" but denied being drunk. She said he said he was sorry and that he hoped what had happened would not affect his relationship with the staff.
24. Colleague D, the Pharmacy Manager, stated that she had been off work on 28 March 2023 when she received a call at 9.15am from one of the pharmacy assistants advising her of concerns about the Registrant. She said she told the staff to close the shop and make sure no prescriptions were checked or handed out. She then went to the Pharmacy to support the team. She stated that when she arrived at the Pharmacy, the Registrant looked dishevelled, unsteady on his feet and was incoherent. She described this being out of character for him. Colleague D said that she told the Registrant that she didn't think he was fit to be at work and that she sent him home in a taxi. She stated that she later called the police and asked them to conduct a welfare check at the Registrant's home address as she was concerned about him.

#### Particular 2 – Medical Condition

25. REDACTED
26. REDACTED
27. REDACTED
28. REDACTED
29. REDACTED

#### **Evidence and Submissions on Grounds (Misconduct, Health and Conviction) and Impairment**

30. The Committee heard from REDACTED

31. REDACTED
32. REDACTED
33. REDACTED
34. REDACTED
35. Witness A considered it would be beneficial for the Registrant to return to employment REDACTED
36. The Committee also heard evidence from the Registrant. REDACTED
37. REDACTED
38. REDACTED
39. The Registrant stated he was keen to get back to work and felt he was ready to work again. An ex-colleague, who owned his own “*very busy*” pharmacy, had agreed to offer him a supported role under the supervision of a second pharmacist. That colleague knew the Registrant very well REDACTED. The Registrant said he had worked well in his pharmacy previously. If the Registrant was able to return to work, he said he would do so by a gradual introduction as he had not worked since March 2023. He had registered for CPD courses to update his knowledge. REDACTED
40. In relation to his conviction, the Registrant stated that he understood he had been a danger to the public. He confirmed he had paid the fine imposed and now had been given his driving licence back. The Registrant stated that he was embarrassed about what it could have led to. He realised he could have caused injury hitting a pedestrian. He said that would have been disastrous and he could not have lived with himself if that had happened.

41. The Registrant stated that he realised he had placed pressure on his colleagues at the Pharmacy on 28 March 2023. He said he had not returned to the Pharmacy because he felt too embarrassed but he would be willing to go and see his colleagues to apologise.
42. The Registrant acknowledged that members of the profession and the public would be shocked by his behaviour. He said he was not proud of adding a burden to the Council and those who supported the profession. He assured the Committee that he was doing everything he could REDACTED and he would comply with any suggestions from the Committee. REDACTED
43. REDACTED
44. REDACTED
45. REDACTED
46. REDACTED
47. Ms Tomlinson submitted the Registrant had breached Standards 6 and 9 of the GPhC Standards for Pharmacy Professionals (“the Standards”). She referred the Council to the case of Khan v Bar Standards Board [2018] EWHC 2184 (Admin) which stated that misconduct consists of conduct which amounts to “*seriously reprehensible*”. She also referred the Committee to the case of Remedy UK Ltd v General Medical Council [2010] EWHC 1245 (Admin) which confirmed that misconduct could include:

*“Misconduct is of two principal kinds. It may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outside the course of professional practice, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession..... it is dishonourable or attracts some kind of opprobrium”.*

48. Ms Tomlinson submitted, as set out in her Skeleton Argument that the grounds of misconduct, health and conviction were all established. She submitted Rule 5(2)(a) to (c) of the Rules were all engaged and the Registrant's fitness to practise was currently impaired on all three grounds REDACTED She further submitted the public interest required a finding of impairment.
49. Mr Hadley submitted that a single error did not amount to serious misconduct. He submitted the Registrant accepted he had turned up at work whilst in an unfit state on one occasion. He submitted this should be considered in the context of a 35 year career. There had been no actual harm to patients and the Registrant had fully co-operated with colleagues. Mr Hadley submitted this did not amount to misconduct and that should be the end of the matter in relation to the incident on 28 March 2023. He further submitted the Registrant had shown understanding towards his colleagues and understood the consequences of turning up in an unfit state at work.
50. In relation to the conviction, again, Mr Hadley submitted the Registrant understood he had caused a potential risk to the public but there had been no actual harm. This was an incident outside the Registrant's work and the conviction, which was dealt with in the lower courts, was now nearly 3 years old. Mr Hadley submitted the Registrant had self-reported, paid the fine, completed his disqualification period and had been given his driving licence back. He submitted that it may be that the conviction did not mean the Registrant's fitness to practice was currently impaired.
51. REDACTED The Committee was required to consider if he had '*sufficiently*' remediated rather than '*fully*' remediated. Mr Hadley stated that the Registrant understood he probably could not convince the Committee that he had sufficiently remediated his medical condition. He submitted that times had changed a great deal and members of the public may accept that a pharmacist could have REDACTED a conviction and one attendance at work in an unfit state. Mr Hadley submitted the Registrant had served the community for over 35 years and the public interest may not demand a finding of impairment.

## Decision on Misconduct/Health/Conviction

52. Having found, on the Registrant's admissions, that Particulars 1, 2 and 3 of the Allegation were proved, the Committee went on to consider whether:
- Particular 3 amounted to misconduct and, if so, whether the Registrant's fitness to practise is currently impaired;
  - The Registrant's fitness to practise is currently impaired by reason of his health condition in Particular 2
  - The Registrant's fitness to practise is currently impaired by reason of his conviction in Particular 1.
53. The Committee took account of the guidance given to the meaning of 'fitness to practise' in the Council's publication '*Good decision-making: Fitness to practise hearings and outcomes guidance*' (March 2024). Paragraph 2.12 reads:
- "A pharmacy professional is 'fit to practise' when they have the skills, knowledge, character, behaviour and health needed to work as a pharmacist...safely and effectively. In practical terms, this means maintaining appropriate standards of competence, demonstrating good character, and also adhering to the principles of good practice set out in our various standards, guidance and advice."*
54. The Committee took into account the documents provided, the evidence it had heard, the advice from the Clinical Adviser and the submissions made by both parties.
55. The Committee bore in mind that the Standards may be taken into account when considering the issues of grounds and impairment but that a breach of the Standards does not automatically result in a finding of misconduct (Rule 24(11) of the Rules). As the Registrant had admitted Particulars 1 and 2, the statutory grounds of conviction and health were established.

### Particular 3

56. The Committee considered whether the Registrant had breached any of the Council's Standards for Pharmacy Professionals (May 2017) when attending work in an unfit

state on 28 March 2023. The Committee found that there had been a breach of the following standards:

- a. Standard 6 – Pharmacy professionals must behave in a professional manner.

The Registrant had been the Responsible Pharmacist at the Pharmacy on 28 March 2023 and had attended work in an unfit state. In doing so he had failed to consider the impact his attendance would have on patients as well as colleagues in the Pharmacy. He had not behaved in a professional manner on this occasion.

- b. Standard 9 – Pharmacy professionals must demonstrate leadership.

The Registrant had not demonstrated leadership as he had not led by example. There were junior colleagues working at the Pharmacy who were relying on him as the Responsible Pharmacist to be able to properly check medications, advise about patient queries and be responsible for the running of the Pharmacy while he was there. He had not ensured that patients would receive safe and effective care by turning up at work in a condition such that he was unable to provide that care. He had not assessed the risks of attending work in an unfit state or taken steps to reduce such risks. This was a failure to demonstrate leadership.

57. Whilst the Committee accepted that this had been one incident at work, it took into account a number of factors which made it particularly serious. The other staff members at the Pharmacy that morning were junior employees who were surprised by the Registrant's behaviour, so much so that they had called the Manager, who had been on leave that day, for support. The delivery driver had been so concerned by the Registrant's conduct that she had stayed at the Pharmacy to ensure that a junior staff member would not be left alone to deal with the Registrant. It was clear from the descriptions given by the Registrant's colleagues that he was in no fit state to be at the Pharmacy and they tried to hide him from patients. The Registrant was not able to converse coherently with the staff and was sent home in a taxi. His conduct had placed his colleagues in a vulnerable position. Whilst there had been no harm caused to patients, customers in the Pharmacy had been asked to leave so that the shop could be closed. It appeared the Pharmacy remained closed for at least an hour

whilst a replacement pharmacist was located. The Registrant's behaviour had led to this and so had placed patients at potential risk of harm.

58. The Committee concluded that the Registrant's conduct had been sufficiently serious and grave to amount to misconduct. It was conduct that had potentially placed patients and colleagues at risk. Fellow practitioners would regard it deplorable to attend work while in such an unfit state that the Registrant unsteady on his feet, he struggled to sign the Responsible Pharmacist Log or speak coherently and had to be sent home in a taxi resulting in the closure of the Pharmacy for a period of time impacting on patients, his colleagues and his employers. The Committee found the Registrant's conduct amounted to misconduct.

#### **Decision on Impairment**

59. The Committee took into account the full context in which the misconduct, medical condition and conviction had arisen. REDACTED
- REDACTED
  - He was arrested on 1 August 2021 which resulted in his conviction for driving after consuming excessive alcohol REDACTED
  - REDACTED
  - On 28 March 2023, he attended the Pharmacy REDACTED in an unfit state.
  - REDACTED
  - REDACTED
60. The Committee concluded that all three statutory grounds were inextricably linked with the Registrant's medical condition. The misconduct and conviction had both arisen due to the Registrant's medical condition. REDACTED
61. The Committee noted that in in his Reflective Review dated June 2024, the Registrant REDACTED and made reference to his conviction and the incident in the Pharmacy which happened after this date. In the Appendix to his reflective statement, he had acknowledged REDACTED.

## Particular 2

62. The Registrant had admitted the medical condition as set out in Schedule 1 –  
REDACTED
63. Rule 5(3) of the Rules states that when considering impairment by reasons of adverse health:

*"In relation to evidence about the registrant's physical or mental health which might cause doubt on whether the requirements as to fitness to practise are met in relation to the registrant, the Committee must have regard to whether or not that evidence shows actual or potential –*

*(a) self-harm; or*

*(b) harm to patients or the public".*

64. REDACTED

65. Rule 24(10) of the Rules states:

*"In determining whether a registrant's fitness to practise is impaired by reason of physical or mental health, the Committee may take into account, amongst other matters–*

*(a) a refusal by the person concerned to submit to a medical examination;*

*(b) the current physical or mental condition of the person concerned;*

*(c) any continuing or episodic condition suffered by the person concerned; and*

*(d) any underlying condition suffered by the person concerned which, although in remission, is capable of causing impairment of fitness to practise if it recurs."*

66. REDACTED The Committee concluded the Registrant's fitness to practise was currently impaired by reason of his medical condition.

## Particulars 1 and 3

67. The Committee went on to consider whether the Registrant's fitness to practise is currently impaired by reason of his misconduct and/or conviction. In doing so the Committee considered Rule 5(2) of the Rules and whether the Particular 3 showed that the actions of the Registrant:



- (a) present an actual or potential risk to patients or to the public*
- (b) has brought, or might bring, the profession of pharmacy into disrepute*
- (c) has breached one of the fundamental principles of the profession of pharmacy*
- (d) means that the integrity of the Registrant can no longer be relied upon.*

68. The Committee was satisfied that Rules 5(2)(a), (b) and (c) were engaged in this case.
69. In relation to Rule 5(2)(a), the Committee had already found that the Registrant had presented a potential risk to patients and the public by attending work in an unfit state. He had also presented a serious risk to members of the public by driving a vehicle after consuming excessive alcohol – he was almost three times over the legal limit. The police report stated that the Registrant’s vehicle had crossed the central white line, where fortunately there was no other traffic. The report stated that after correcting its position, the Registrant’s vehicle was swerving slightly in its lane, coming close to the central reservation at least three times. The Committee recognised that the Registrant’s conviction was outside his professional practice but this was a serious conviction. Both of these incidents, attending the Pharmacy whilst in an unfit state and his conviction, had been due to his medical condition, REDACTED Rule 5(2)(a) was therefore engaged.
70. In relation to Rule 5(2)(b) the Committee was satisfied that the Registrant’s conduct had brought the profession of pharmacy into disrepute. Members of the public did not expect pharmacy professionals to attend work in an unfit state or be convicted of an offence for driving after drinking an excessive amount of alcohol. REDACTED The Committee concluded Rule 5(2)(b) was engaged.
71. Finally, in relation to Rule 5(2)(c), the Registrant had breached the fundamental principles of the profession of pharmacy. He had failed to protect, promote and maintain the health, safety and wellbeing of the public by attending work in an unfit state. He had failed to maintain public confidence in the profession by being convicted of a driving offence that was so serious, he was disqualified from driving for 24 months. The Committee was satisfied that Rule 5(2)(c) was also engaged.

72. The Committee then considered whether:
- the conduct which led to the complaints is able to be addressed
  - the conduct which led to the complaints has been addressed
  - the conduct which led to the complaints is likely to be repeated
  - a finding of impairment is needed to declare and uphold proper standards of behaviour and/or maintain public confidence in the profession.
73. Having found that both incidents were due to the Registrant's medical condition, the Committee was satisfied that the medical condition could be addressed, REDACTED
74. These were all encouraging and demonstrated the Registrant's insight into his medical condition REDACTED His Reflective Statement and his evidence showed that he had acknowledged what had happened, understood the causes REDACTED and understood the impact his conduct had had on patients, colleagues and members of the public. He had taken action to ensure there would be no repetition and had thereby shown significant remediation. In his evidence the Registrant had spoken of his embarrassment and willingness to accept any suggestions to help him further. REDACTED
75. However, there were also further steps that the Registrant needed to take REDACTED In light of this the Committee concluded the Registrant's fitness to practise is currently impaired.
76. The Committee considered carefully whether it was also in the public interest to make a finding of impairment. The public expects pharmacists to comply with the law, and ensure the safe and effective provision of pharmacy services. The Committee concluded that a finding of impairment is also necessary to uphold professional standards and to maintain public confidence in the profession and in the regulator. A finding of impairment also promotes professional standards by making clear to other professionals what is expected of them.
77. The Committee concluded that it was also in the public interest to find that the Registrant's fitness to practise remains currently impaired.

## Decision on Sanction

78. 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 Order. 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.
79. 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.
80. The Committee had regard to the Council's '*Good decision making: Fitness to practise hearings and outcomes guidance*' (March 2024) to inform its decision and the '*Good decision-making: Conditions bank and guidance*' (July 2023).
81. The Committee took into account the documents provided, the submissions made by Ms Tomlinson and Mr Hadley, the evidence from the medical expert, the Registrant's evidence and the advice of the Clinical Adviser.
82. In summary, Ms Tomlinson submitted a suspension of 12 months was the appropriate sanction in this case. She submitted this would reflect the seriousness of the conviction, the misconduct and allow the Registrant time to take additional steps in relation to his medical condition. Ms Tomlinson stated that the Registrant could work in a pharmacy setting as a dispenser, or in another unregulated role, during the period of suspension. She confirmed the Registrant had been subject to an Interim Suspension Order since 5 June 2023 for a period of 18 months and this would need to be revoked.
83. Mr Hadley submitted the Committee had already found that the conviction and misconduct were inextricably linked to the Registrant's medical condition and this was a case where there was a potential risk of harm, not actual harm. He submitted

the conviction and misconduct could have been dealt with by way of a warning but conceded that due to the Registrant's health, Conditions with a review were probably the way to manage the risk. He made a number of suggestions about which Conditions might be appropriate and relevant, including REDACTED supervision, and notification requirements. He confirmed the Registrant would consider all options with regard to employment and had not restricted himself to just working with his ex-colleague. He submitted the Registrant had moved on REDACTED and would comply with any conditions. He had shown insight REDACTED Mr Hadley submitted the Registrant had further demonstrated REDACTED by attending this hearing and fully co-operating throughout this process REDACTED

84. Mr Hadley submitted that if the Committee decided a suspension was the minimum sanction necessary in this case, then he suggested 3-6 months would be sufficient REDACTED to reflect further and provide a reviewing committee with references and updates REDACTED He confirmed the Registrant would comply with any restrictions imposed REDACTED
85. The Committee first considered what, if any, aggravating and mitigating factors there were. The Committee identified the following aggravating factors:
- a. There had been two serious incidents, both alcohol related, over a period of 3 years which had placed patients and members of the public at risk of serious harm.
  - b. The Registrant had made two separate decisions - to drive after consuming excessive alcohol and to attend work while in an unfit state. This demonstrated a pattern of behaviour albeit those incidents were related to the Registrant's health.
  - c. The Pharmacy had to be closed on 28 March 2023 for at least an hour which meant that patients were unable to access the care they may have needed and service was disrupted.
  - d. REDACTED
86. The Committee identified a number of mitigating factors, which included:

- a. The Registrant had made admissions and had apologised for his conduct.
- b. The Registrant had shown insight, remorse and regret.
- c. He had a long unblemished career for a period of over 35 years.
- d. The Registrant had suffered from personal problems REDACTED
- e. He had fully co-operated with his regulator REDACTED
- f. There had been no personal gain to the Registrant by his conduct.
- g. REDACTED
- h. REDACTED

87. The Committee carefully considered all the circumstances. Although this was a case where there had been no actual harm caused to patients or to the public, this was only through good fortune. It was pertinent that the misconduct and conviction were related directly to the Registrant's medical condition.

88. REDACTED.

89. REDACTED

90. REDACTED

91. REDACTED The Committee could not be sure that the risk REDACTED was low and therefore the risk of repetition remained high. This meant that there was a potential risk of harm to the public and to the reputation of the pharmacy profession.

92. The Committee concluded that taking no action or issuing a warning were not sufficient in this case to address the risk of repetition or to reflect the seriousness of the misconduct, conviction and medical condition. These outcomes would not protect the public or uphold standards of behaviour.

93. The Committee gave considerable thought to whether Conditions could be imposed at this stage REDACTED there was therefore still a high risk of a repetition. REDACTED The Committee was also mindful that the Registrant had not worked since March 2023 and he had accepted he needed to update his CPD and skills.

REDACTED The Committee concluded that taking all these factors into account, there was still further work the Registrant needed to do to demonstrate sufficient remediation and therefore it could not identify Conditions which would be appropriate and workable at this stage to address the risks identified.

94. The Committee concluded that in order to ensure the public was protected, it would need to be satisfied that REDACTED The Committee determined that a Suspension Order of 6 months was the appropriate and proportionate sanction in this case. It was the minimum necessary to protect patients and the wider public, declare and uphold standards of conduct and behaviour and maintain public confidence in the profession. REDACTED That Suspension Order will be reviewed before its expiry.
95. REDACTED It noted that the Registrant is able to work in a pharmacy setting in an unregulated role while suspended, perhaps as a dispenser. REDACTED
96. The Committee took into account the case of Kamberova v Nursing and Midwifery Council [2016] EWHC 2955 (Admin) which Mr Hadley had referred to and considered whether the 13 months interim period of suspension, to which the Registrant had already been subject, was a relevant factor when determining sanction. However, in this case the Suspension Order for 6 months is being imposed on public protection grounds due to the Registrant's medical condition, so the Committee did not consider the interim suspension period was relevant to its decision on sanction.
97. The Committee was satisfied that Removal is not appropriate, notwithstanding the serious misconduct and conviction, as this case involves a health condition which contributed to these two incidents and the Registrant should be given the opportunity to remediate.
98. The Committee cannot bind a future reviewing committee but considered that committee may be assisted on a review by the following:
  - REDACTED
  - REDACTED
  - REDACTED
  - An updated Reflective Statement from the Registrant

- Testimonials from any employment undertaken (whether paid or unpaid)
- Evidence of any CPD or refresher training undertaken

99. The Committee confirmed the Interim Suspension Order of 5 June 2023 is revoked.

### **Interim Measures**

100. The Council's Case Presenter made an application for Interim Measures under Article 60 of the Order. She reminded the Committee that the Suspension Order it had imposed would not take effect until 28 days after the date of the Committee's decision, which was the appeal period during which the Registrant could appeal the Committee's decision. Without interim measures, the Registrant would be able to practise unrestricted during that 28 day period and also during any appeal period, which could take many months.

101. Mr Hadley confirmed that the Registrant had no objection to the application for interim measures. He understood why the interim measures were required to cover any appeal period.

102. The Committee again took into account its '*Good Decision making: Fitness to practise hearings and outcomes guidance*'. The Committee has found in this case that there remains a potential risk of repetition and therefore a risk to the Registrant's own health, to patients and the public as well as to the reputation of the profession. The Registrant has not yet shown sufficient remediation such that a suspension of the Registrant's ability to practise is required. The Committee has made a Suspension Order for a period of 6 months REDACTED It therefore follows that Interim Measures should be in place to ensure any appeal period is similarly protected.

103. Whilst there had been no evidence of actual patient harm in this case, the Committee concludes that Interim Measures of a Suspension Order are required in the public interest and to protect the public. The Committee grants the application.

104. This concludes the determination.