

General Pharmaceutical Council

Fitness to Practise Committee

Principal Hearing

Remote videolink hearing

20 August 2024

Registrant name:	Elena Turner
Registration number:	5107593
Part of the register:	Pharmacy Technician
Type of Case:	Conviction
Committee Members:	Sarah Hamilton (Chair) Sima Hassan (Registrant member) Wendy Golding (Lay member)
Committee Secretary:	Gemma Staplehurst
Registrant:	Present and not represented
General Pharmaceutical Council:	Represented by Ayshe Sevdan, Case Presenter
Facts proved by admission:	All
Fitness to practise:	Impaired
Outcome:	Suspension, 10 months with review.
Interim measures:	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 17 September 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

“You, a registered Pharmacy Technician, were convicted on 11 September 2023 at St

Albans Crown Court of:

1. On the 2nd day of January 2023 without authorisation, conveyed a SIM card and three SD cards, being articles listed in section 40A (2) Prison Act 1952, into his Majesty’s Prison at the Mount, Bovingdon.

2. On the 2nd day of January 2023 without authorisation, conveyed cannabis, being an article or substance listed in section 40A (2) Prison Act 1952, into his Majesty’s Prison at the Mount, Bovingdon.

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

Documentation

Document 1- GPhC hearing bundle (42 pages)

Document 2- GPhC skeleton argument (10 pages)

Determination

Introduction

1. This is the written determination of the Fitness to Practise Committee of 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 statutory grounds 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.

Application for the hearing to be held partly in Private

6. The Committee heard an application from the Council under Rule 39(3) to hold parts of the hearing in private. The Registrant agreed with that application.
7. The Committee decided to hold certain parts of the hearing in private as there will be reference to the Registrant's health.

Particulars of Allegation

8. The Particulars of Allegation are as follows:

“You, a registered Pharmacy Technician, were convicted on 11 September 2023 at St Albans Crown Court of:

1. On the 2nd day of January 2023 without authorisation, conveyed a SIM card and three SD cards, being articles listed in section 40A (2) Prison Act 1952, into his Majesty’s Prison at the Mount, Bovingdon.

2. On the 2nd day of January 2023 without authorisation, conveyed cannabis, being an article or substance listed in section 40A (2) Prison Act 1952, into his Majesty’s Prison at the Mount, Bovingdon.

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

Registrant’s response to Particulars of allegation

9. The Registrant admitted the entire Allegation at the start of the hearing. In light of this, and by the application of Rule 31(6) of the Rules, the admitted factual particulars were found proved.

10. The Committee went on to consider whether the Registrant’s fitness to practise is currently impaired, which is a matter for the Committee’s judgement.

Background

11. On 2 January 2023, the Registrant visited His Majesty’s Prison, The Mount Prison in Bovingdon, Hertfordshire (“the Prison”) to see an inmate. Upon arrival, she was led to an area where visitors are searched by staff working at the Prison. While in this area, a drug detection dog indicated the Registrant to its handler, who led the Registrant to a private searching area. The Registrant was asked if she was carrying any prohibited

items to which she replied in the negative. She then consented to a physical search during which it was found that a package had been concealed in her cleavage. Upon discovery, the Registrant was requested to surrender the object to staff with which she complied. On inspection, the package was suspected to contain cannabis, memory cards and a SIM card for a mobile phone.

12. The Registrant was subsequently arrested on suspicion of conveying a prohibited item into the Prison. The package was later found to contain 11 grams of cannabis, a phone SIM card, and three SD cards. These objects are considered prohibited articles under the Prison Act 1952. As a result, the Registrant was charged with:

- Bringing a List A prohibited item into prison – Cannabis
- Bringing a List B prohibited item into prison – Mobile phone SIM card and three SD cards

13. On 11 September 2023, the Registrant pleaded guilty at a hearing before St Albans Crown Court. She was subsequently sentenced to nine months custody, suspended for 18 months, with curfew and **PRIVATE** requirements.

14. The Committee has seen the sentencing remarks of the Judge, which included the following:

“I’ve got to deal with you for two matters of conveying articles into a prison. That is something that the courts take incredibly seriously. Drugs in prison are a real problem. Inmates having mobile phones in prison are a real problem. It allows them to continue to commit crime whilst they are in custody and that’s one of the reasons that the courts take these offences as seriously as they do.

On the 2nd of January of this year you went to the Mount Prison in order to visit a prisoner that it seems that you had struck up something of a relationship with. Everybody agrees you hadn’t met him before you went to visit him in prison and you were a repeat visitor to go and see him. He clearly managed to persuade you to bring him some drugs and a SIM card because whilst you were going through the security procedure, a drugs dog gave a positive indication...

You had the good sense to plead guilty to these matters at the PTPH hearing... You clearly had a significant role, in my view, when it came to the supply of these particular drugs. It's obviously a category 3 case because that includes the supply of drugs in a custodial institution and that's what you were doing. That gives me a starting point of 12 months' imprisonment had you contested this matter after a trial. I was going to say it seems to me it is significantly aggravated by the fact that you were supplying into a prison but, on the face of the guideline, it seems to take that into account now and so I do take the 12 month starting point on each of the two offences. I reduce that to a sentence of nine months' imprisonment in order to reflect your guilty pleas..."

15. The Judge also had the benefit of a short **PRIVATE** report, which was included in the Council's bundle, which stated the following: **PRIVATE**

Evidence for this hearing

16. **PRIVATE**

17. The Registrant had also provided a written reflection prior to this hearing which stated as follows:

*"I would like to once again formally apologise for breaking my code of conduct on 2nd January 2023. I have since completely changed my life for the better. I have found a new job, **PRIVATE** and am almost halfway through my 18 month suspended sentence with no issues.*

Pharmacy is the only job I have ever undertaken since the age of 16 and I have worked extremely hard to complete all my qualifications and work my way up the ladder. Being a pharmacy technician will help me benefit my child's future as I will be showing him having a career is the way forward in life and to follow your dreams. It will also of course financially benefit myself and my son by allowing us to live independently and provide him with the necessities in life.

I therefore ask that you consider allowing me to keep my license to practice and allow me to come back to the pharmacy world to continue my career.”

Impairment

18. Having found the Particulars of Allegation proved, the Committee went on to consider whether these amounted to the statutory ground of conviction and, if so, whether the Registrant’s fitness to practise is currently impaired.

Statutory ground

19. In relation to the conviction, the Committee has seen the Certificate of Conviction, and has no hesitation in finding that by reason of the Registrant’s conviction the statutory ground is met.

20. The Registrant breached a fundamental principle of the profession (i.e. to be honest and trustworthy). She attempted to smuggle prohibited items of cannabis, a SIM card and memory cards into a prison, which she knew was wrong and unlawful. The Committee also determined that there had been a breach of the following Standard for Pharmacy Professionals:
 - Standard 6 - Pharmacy professionals must behave in a professional manner

Decision on Impairment

21. Having found that the Particulars of Allegation amounted to conviction, the Committee went on to consider whether the Registrant’s fitness to practise is currently impaired. In doing so the Committee considered whether the particulars found proved show that the conduct of the Registrant:
 - *presents an actual or potential risk to patients or to the public*
 - *has brought, or might bring, the profession of pharmacy into disrepute*

- *has breached one of the fundamental principles of the profession of pharmacy*
- *means that the integrity of the registrant can no longer be relied upon*

Council's submissions

22. Ms Sevdan submitted that the Registrant has brought the profession of pharmacy into disrepute and has breached one of the fundamental principles of the profession of pharmacy. She said that the Registrant deliberately concealed and carried items into a prison where it is known that such items are prohibited, and then lied when confronted about this. Ms Sevdan submitted that in this regard the Registrant failed to act with honesty and integrity.
23. Ms Sevdan also submitted that the Registrant's actions were a departure from the standards expected of a pharmacy professional. She said that it is highly likely that confidence in the profession would be undermined if the public came to learn that a pharmacy professional had received convictions for bringing into a prison prohibited items including a List A prohibited article and a Class B drug.
24. Ms Sevdan submitted that this was not a momentary lapse of judgement on the part of the Registrant, but rather was planned and premeditated.
25. Ms Sevdan stated that there have only been limited efforts towards remediation by the Registrant, and that such criminal conduct is not easily remediable. **PRIVATE**
26. Ms Sevdan accepted that the Registrant has shown remorse, pleaded guilty at the Crown Court and has provided a written (albeit brief) reflection for these proceedings. However, she said that the reflection focused on the impact which the conviction has had on the Registrant herself.

27. Finally, Ms Sevdan stated that a finding of impairment was required in order to uphold standards

Registrant's submissions

28. At this hearing the Registrant made oral submissions. She wished to apologise to the Committee for her behaviour. **PRIVATE**
29. **PRIVATE**
30. The Registrant was dismissed from her job as a Pharmacy Technician following her conviction. Since November 2023 she has been working as a receptionist/prescriptions clerk in a GP surgery to keep her professional knowledge up to date. She is currently on maternity leave, and plans to go back to work in February 2025.
31. In answer to questions from the Committee, the Registrant said that a member of the public, knowing about her conviction, would not have trust in her, or in pharmacy in general. She knew at the time of her offending that it was wrong, but she felt pressurised by the inmate to bring the items into the prison. She said she was scared of him, as he knew where she lived. Since her conviction she has cut all ties with him.
32. **PRIVATE**
33. Finally, the Registrant said that she is in a much better place now. Her relationship with her mother has improved since she has had her son, and she has the support of her full family.

Decision on impairment

34. The Committee has taken into account Section 6.8 of the *Good Decision Making: Fitness to Practise Hearings and Sanctions Guidance* which states:

“Regulators ensure that public confidence in a profession is maintained. This is a long established principle and our standards state that registrants should act with honesty and integrity to maintain public trust and confidence in the profession. There are some acts which, while not presenting a direct risk to the public, are so serious they undermine confidence in the profession as a whole. The GPhC believes that dishonesty damages public confidence, and undermines the integrity of pharmacists and pharmacy technicians. However, cases involving dishonesty can be complicated – committees should carefully consider the context and circumstances in which the dishonesty took place.”

35. The Committee considered whether the behaviour leading to the conviction was remediable and had been remedied. Dishonesty is an attitudinal issue, which is often said to be harder to remediate. The Committee considered that this was potentially remediable, **PRIVATE**. However, that appears to be the extent of the Registrant’s remediation before this hearing. Her written reflection was very brief, concentrating on herself and her wish to continue to practise as a pharmacy technician. She did not mention the effect her behaviour could have had on the inmate if she had managed to smuggle the goods into prison, and the wider prison population.
36. Importantly the Registrant also did not appear to have reflected on the standards required of pharmacy professionals, and how her behaviour breached those standards. Until today there was also a lack of evidence showing insight into the impact which the Registrant’s conviction would have had on public confidence in the profession. Her sole focus appeared to be herself, and how it will benefit her and her son financially if she is permitted to keep her registration.
37. During the hearing today the Registrant was open and honest, stating that at the time of her offending she had not thought about the standards required of pharmacy professionals. She has not addressed this issue during the time since her conviction.

Although she was able to articulate today the impact her behaviour would have had on members of the public and fellow professionals, the Committee considered that this issue had not occurred to the Registrant to any meaningful extent before this hearing.

38. In addition, the Registrant has not supplied any character references or testimonials. She has also not provided evidence of remediation such as courses or training undertaken around professionalism, ethics and honesty.
39. The Registrant's conviction was for a serious criminal offence, which engaged Rules 5(2)(b) and (c). The Committee is not satisfied that the Registrant's insight is so well developed that there is no risk of repetition, although now that the Registrant has a family of her own, the risk is probably lower. If the conduct were to be repeated, public confidence in the profession would be seriously damaged.
40. The Committee also considered that this conduct was so serious that the wider public interest (i.e. maintaining public confidence and upholding professional standards) requires a finding of impairment. This is necessary to mark the seriousness of what has occurred and thereby maintain public confidence and promote professional standards by making clear to other professionals what is expected and deterring other professionals from failing to meet standards.
41. The Committee therefore finds the Registrant's current fitness to practise to be impaired.

Decision on Sanction

42. Having found impairment, the Committee now moves on to consider the appropriate sanction. The Registrant was convicted of attempting to smuggle cannabis, a SIM card

and three memory cards into a prison. She was given a prison sentence of nine months, suspended for eighteen months until June 2025.

43. The sanctions available to the Committee are set out in Article 54 of the Pharmacy Order 2010. In summary, the Committee may decide to take no action, may give a warning, may direct that the entry on the register be conditional, may order that the entry on the register be suspended for a period not exceeding 12 months, or may make an order that the entry in the register be removed.
44. The Committee understands that the three-fold purpose of sanction is the protection of the public, the maintenance of public confidence in the profession and the maintenance and declaration of proper standards of conduct within the profession. It is not the purpose of any sanction imposed by the Committee to punish a registrant, although the Committee acknowledges that its effect may be punitive. The Registrant has already received her punishment from the court, namely a suspended prison sentence. She also lost her job as a pharmacy technician as a result of her conviction.
45. In the case of *Bolton v Law Society [1994] 2AER 486* it was said that the reputation of the profession is more important than the fortunes of any individual member. Thus it was observed that a Committee is entitled to give more weight to the public interest than to the consequences for any individual registrant.
46. The Committee is guided by the Council's publication '*Good decision making: fitness to practise hearings and sanctions guidance*' (March 2024). The Committee is invited by that publication to consider a number of factors. They include:
 - the extent to which a registrant has breached professional standards
 - the interests of the registrant weighed against the public interest

- the overarching objective of the Council
- the personal circumstances of the registrant,
- any mitigation offered
- that the decision is sufficient to protect the public
- any testimonial or character references given in support of the registrant
- relevant factors aggravating the conduct in the case,
- any statement of views provided by a patient or anybody else affected by the conduct of the registrant
- submissions made by the Council’s representative and by the registrant or their representative, and
- the content of the sanctions guidance document

47. The document contains particular guidance in cases involving dishonesty. Paragraph 6.8 states:

“Regulators ensure that public confidence in a profession is maintained. This is a long established principle and our standards state that professionals should act with honesty and integrity to maintain public trust and confidence in the profession. There are some acts which, while not presenting a direct risk to the public, are so serious they undermine confidence in the profession as a whole. The GPhC believes that dishonesty damages public confidence, and undermines the integrity of pharmacy professionals. However, cases involving dishonesty can be complicated – committees should carefully consider the context and circumstances in which the dishonesty took place. Therefore, although serious, there is not a presumption of removal in all cases involving dishonesty.”

48. In addition, paragraph 6.9 states:

“Some acts of dishonesty are so serious that the committee should consider removal as the only proportionate and appropriate sanction. This includes allegations that involve intentionally defrauding the NHS or an employer, falsifying patient records, or dishonesty in clinical drug trials”.

49. Finally, paragraph 6.10 states:

“When deciding on the appropriate sanction in a case involving dishonesty, the committee should balance all the relevant issues, including any aggravating and mitigating factors. It is important to understand the context in which the dishonest act took place and make a decision considering the key factors. The committee should then put proper emphasis on the effect a finding of dishonesty has on public confidence in the profession”.

50. In terms of addressing sanction, the Committee is advised to begin at the least restrictive sanction and work upwards until it finds the sanction which is proportionate and appropriate in the circumstances.

51. Ms Sevdan referred to the case of *Bolton* and also the case of *R (on the application of Darren Williams) v Police Appeals Tribunal [2016] EWHC 2708 (Admin)*, which considered personal mitigation, finding that this is of secondary importance to the purpose of ensuring public confidence in a profession.

52. Ms Sevdan submitted that the general principle in the case of *General Medical Council v Fleischmann 2005 EWHC 87* did not apply in this case (see below), as this was a public interest case.

53. Ms Sevdan submitted that the appropriate and proportionate sanction would be a period of suspension for four months, without a review.

54. The Registrant said that she appreciated there would have to be a sanction, but left it for the Committee to decide what is appropriate in this case.

Decision on sanction

55. The *Good Decision Making* guidance referred to above advises that the Committee should consider the circumstances in which the proven facts took place, including the following:

- whether the incident was a ‘one-off’ or repeated
- the setting in which the incident took place
- any relevant personal matters
- if there is a relevant history of fitness to practise concerns
- if there was an abuse or breach of trust
- if there was an abuse by the registrant of their professional position
- any financial gain on the part of the registrant

56. In this case the behaviour was a “one-off” and not repeated, and did not take place in the course of the Registrant’s professional practice. There is no evidence that it was for financial gain.

57. The Committee was advised that the Registrant does have fitness to practise history, relating to her drinking driving conviction in June 2021. **PRIVATE** at the time of that offence, the Council decided that it would not forward the concern to the Investigating Committee. Instead, the Registrant agreed to sign a six month voluntary agreement.

58. The Committee has found that the Registrant breached one of the fundamental tenets of the profession, namely to act honestly, and that her behaviour fell seriously short of the standards expected of a pharmacy technician. Her offending was premeditated and when she was asked by the dog handler whether she was carrying anything she lied. She did, however, plead guilty at the pre-trial hearing, and admitted the Allegation at the start of this hearing.

59. The Committee considers the following to be aggravating factors in this case:

- This was a serious conviction, attempting to smuggle drugs and prohibited articles into a prison.
- The offending was planned and premeditated
- There has been no evidence of remediation beyond what was required as part of the Registrant's sentence.
- The Registrant has not provided sufficient reflections to demonstrate that she fully understands the impact which her conviction has had on the public or the profession, or that she has considered her obligations under professional standards
- The Registrant has fitness to practise history relating to a previous conviction
- The Registrant has not supplied any testimonials or character references.

60. The mitigating factors in this case are as follows:

- **PRIVATE**
- **PRIVATE**
- The Registrant pleaded guilty at court and admitted the allegation at this hearing
- The Registrant has engaged with the Council throughout and attended this hearing
- The Registrant has shown remorse and some insight

61. Turning to sanction, the Committee considers that either taking no action or giving a warning would be inadequate responses to such a serious offence. The *Good decision making guidance* states that a warning may be appropriate where there is no need to take action to restrict a professional's right to practise, there is no continuing risk to patients or the public, but there needs to be a public acknowledgement that the conduct was unacceptable. In light of the serious nature of the offence, the limited insight and the risk of repetition, the Committee considers that there is a need to restrict the Registrant's practice.
62. As these events did not arise as a result of deficient professional practice, conditions of practice would not be appropriate or practicable in terms of remediating the Registrant's conduct. The Committee could not identify any conditions which would address its concerns regarding the Registrant's dishonesty. In any event the offence is too serious for conditions of practice.
63. The Committee is therefore in the realms of either suspension or removal from the register.
64. The guidance states that suspension may be appropriate where "*The committee considers that a warning or conditions are not sufficient to deal with any risk to patient safety or to protect the public, or would undermine public confidence. When it is necessary to highlight to the profession and the public that the conduct of the professional is unacceptable and unbecoming a member of the pharmacy profession. Also when public confidence in the profession demands no lesser outcome.*" This Committee has decided that a warning or conditions are not sufficient, and would undermine public confidence. In order to decide whether suspension is the most appropriate and proportionate sanction, the Committee also looked at removal from

the register. The guidance makes clear that there is not a presumption of erasure in all cases involving dishonesty. The Committee reminded itself that it was an isolated incident, and does not come within any of the categories mentioned in the guidance where it is likely that removal is the only proportionate and appropriate outcome.

65. The Committee noted that the guidance regarding erasure states: *“Removing a professional’s registration is reserved for the most serious conduct... The committee should consider this outcome when the professional’s behaviour is fundamentally incompatible with being a registered professional.”* In this case the Committee has decided that the conduct is potentially remediable. It does not believe that it is fundamentally incompatible with continued registration.

66. The Committee has therefore concluded that the appropriate response is a period of suspension. The Committee considered the case of *Fleischmann* referred to above, where Newman J stated;

“I am satisfied that as a general principle where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstance could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence but that good standing in a profession must be earned if the reputation of a profession is to be maintained.”

67. The Committee did not consider that there were any circumstances in the present case which would plainly justify a departure from this principle. The Registrant’s suspended sentence ends in June 2025, so ten months time. The Committee has decided that the period of suspension suggested by the Council (four months) would have been too

lenient, taking into account the seriousness of the offence, and balancing the mitigating and aggravating factors. The Committee has decided that the proportionate sanction is a suspension for ten months. This sanction will send out a message to fellow professionals and members of the public that pharmacy professionals are expected to uphold standards and be law abiding, even outside of the workplace. This period should also allow the Registrant to reflect on this Committee's findings, and work towards developing full insight into her conduct, her obligations under professional standards, and the impact it had on the profession and the public.

68. The Committee acknowledged that this sanction will have an adverse effect on the Registrant as she will not be permitted to practise as a pharmacy technician for the next ten months. However, the case law makes clear that the public interest outweighs the interest of any individual registrant.
69. There will be a review towards the end of the ten months' suspension. This Committee cannot bind the reviewing committee, but considers that it is likely to be assisted by:
- The Registrant providing a detailed written reflection on this Committee's findings, including her obligations under professional standards
 - Evidence of comprehensive CPD and training the Registrant has undertaken regarding honesty, ethics and professionalism, including what she has learned from them
 - Testimonials and character references
 - **PRIVATE**

Decision on Interim Measure

70. Ms Sevdan then applied for an interim measure to be imposed pursuant to Article 60 of the Pharmacy Order 2010 on the grounds of public interest. The decision of this Committee is an appealable one under Article 55(3) of the Pharmacy Order 2010. There will therefore be a period of 28 days before the Committee's direction comes into effect. Furthermore, during that 28 day period the Registrant could lodge an

appeal and, if she did so, the Committee's substantive direction would not take effect until the appeal proceedings were concluded.

71. This is a case where the Committee has found that there remains a risk of repetition, and that the Registrant's conduct was so serious that the appropriate sanction is a ten month suspension. In addition, the Committee has decided that the general principle in Fleischmann applies, that the Registrant should not be permitted to return to practice until her suspended criminal sentence comes to an end. The Committee notes that the Registrant has been subject to an Interim Suspension Order pending the resolution of this hearing.
72. The Committee has therefore decided that the public would be concerned if the Registrant were free to practise without restriction until the substantive order takes effect. It is therefore in the wider public interest for there to be a suspension order during the interim period before this Committee's direction comes into effect.
73. The Committee has therefore determined that the Registrant's registration be suspended by way of interim measures from today's date.
74. This concludes the determination.