

**General Pharmaceutical Council**

**Fitness to Practise Committee**

**Principal Hearing**

Remote videolink hearing

**2-13 September 2024 (3 September non-sitting day) &**

**5-7 November 2024**

<b>Registrant name:</b>	Sunil Kumar Lakhani
<b>Registration number:</b>	2038518
<b>Part of the register:</b>	Pharmacist
<b>Type of Case:</b>	Misconduct
<b>Committee Members:</b>	Claire Bonnet (Chair)  Jignesh Patel (Registrant member)  Paul Barton (Lay member)
<b>Legal Adviser:</b>	Morag Rea
<b>Committee Secretary:</b>	Chelsea Smith & Gemma Staplehurst
<b>Registrant:</b>	Present and unrepresented
<b>General Pharmaceutical Council:</b>	Represented by Gareth Thomas, Case Presenter
<b>Facts proved:</b>	1, 2.2,2.3,2.4,2.5,2.6,3.3,3.4,4.1,4.2, 6.1,6.2,7 and 9
<b>Facts not proved:</b>	2.1,3.1,3.2,5, and 8

<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	Suspension, 12 months with review
<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 5 December 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 2 September 2024)**

*You, a registered pharmacist and superintendent pharmacist working at Sai Pharmacy, 150 - 152 High Street, North London, E6 2HT [“the Pharmacy”]*

1. *On 22 February 2022, placed a used swab taken for a Covid-19 test back into its packaging; **PROVED***

2. *On unknown dates between 11 February 2022 and 22 February 2022:*

2.1. *used Lateral Flow Tests (“LFTs”) for Covid-19 ‘Fit to Fly’ tests in place of Polymerase Chain Reaction (“PCR”) tests **NOT PROVED***

2.2. *did not keep a record of Covid-19 tests completed at the pharmacy **PROVED***

2.3. *did not keep records of courier services used for Covid-19 tests **PROVED***

2.4. *Issued Fit to Fly certificates to patients certifying Circular 1 Health testing service had found their rapid antigen test negative for Covid-19 **PROVED***

2.5. *accepted only cash for Covid-19 tests payments **PROVED***

2.6. *recorded the cash received for Covid-19 tests as no sale **PROVED***

3. *Your conduct at 2.1 to 2.6 above was dishonest in that you:*

3.1. *knew that a PCR test was required for Fit to Fly tests **NOT PROVED***

3.2. *Did not send Circular 1 Health Limited any Covid-19 samples for testing from the*

Pharmacy **NOT PROVED**

3.3. knew that Covid-19 tests conducted at the Pharmacy were not/ would not be tested by Circular 1 Health **PROVED**

3.4. knew that the Fit to Fly certificates provided to patients were not legitimate. **PROVED**

4. In relation to Covid-19 PCR tests, on 22 February 2022 you:

4.1 used a swab kit from Fit2Fly 24/7 Limited at the Pharmacy. **PROVED**

4.2 informed a GPhC Inspector that the Pharmacy used "24/7" services to process tests. **PROVED**

5. Your conduct in at 4.1 and 4.2 above was dishonest as the pharmacy had not used the Covid19 testing services offered by Fit2Fly24/7 Limited since 15 December 2021 **NOT PROVED**

6. On 24 February 2022 you notified a GPhC Inspector by way of email that you:

6.1 did not realise that you needed United Kingdom Accreditation Service (UKAS) accreditation for taking swabs **PROVED**

6.2 had now applied for this accreditation **PROVED**

7. Your conduct at paragraph 6.2 was dishonest in that you knew you had not applied for the relevant accreditation with the UKAS. **PROVED**

8. On or around 22 February 2022, purported to provide a PCR testing service to customers of the Pharmacy when in fact samples were not being sent to a laboratory as required. **NOT PROVED**

9. Between February 2021 and February 2022, did not ensure that testing services provided by the Pharmacy were accredited with UKAS and / or make an application to UKAS. **PROVED**

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

## **Documentation**

Document 1- Council's hearing bundle which also contained the Registrant's bundle comprising his witness statement and a Testimonial.

Document 2- Council's skeleton argument

Document 3 - Registrant's bundles R/1 containing 7 pages of emails and screen shots and R/2 (26 pages), a Government Guidance document, Target product profile: Point of Care SARS-CoV-2 detection tests.

Document 4- Council's supplementary bundle

Document 5- SM/O3 File note dated 4 September 2024 and photographs.

Document 6 – Registrant's bundle R/3 WhatsApp screenshots

## **Witnesses**

Ms 1, Process Improvement and Feedback Manager for UKAS gave evidence at facts stage. She confirmed the contents of her witness statement dated 16 June 2022 that UKAS have found no records of any application for accreditation being submitted by the Pharmacy, nor has the Pharmacy approached UKAS to enquire about gaining UKAS accreditation.

Ms 2, GPhC Inspector gave evidence at facts stage. She adopted the contents of her statement dated 24 June 2022 in respect of a targeted inspection on 22 February 2022 of the Pharmacy and Responsible Pharmacist at Sai Pharmacy, 150- 152 High Street North, East Ham, London, E6 2HT. She also adopted her statement 20 May 2024 exhibiting an email sent from the Registrant to her 24 February 2022.

She confirmed that she saw some completed out of the packaging swabs on a shelf behind the consultation room door, three had been completed using lab kits, but one had a swab which was placed back in a paper wrapping. She said that the Registrant told her it was a Rapid Antigen Test (LFT) and explained the swab had been placed back in its wrapper and not tested because he was busy, acknowledging that this was not the correct procedure.

She referred to photographs of the packaging she had observed and then produced the photographs that she had mistakenly not uploaded to the case file. These photographs were admitted as SM/03

Mr 1, now Casework Manager for the Council gave evidence at facts stage and adopted his statements dated 10 and 12 January 2023 and the exhibits produced therein. He explained that he was unable to follow up details about the relationship between Circular 1 Health and Fit2Fly24/7 with Ms 3, including whether Fit2Fly24/7 had permission to provide the template certificate to their customers, as she became very elusive and all contact with her ceased. He explained that it was very difficult to establish details from Director 1 and 2 despite extreme efforts to secure and preserve evidence from both Directors as they were not forthcoming.

A hearsay witness statement of Ms 3 was admitted in evidence at a case management meeting on 29 May 2024. This was signed and dated on the 7 September 2022. As set out above, the maker then ceased to engage with the proceedings despite a follow up email to her on 24 August 2024 with some additional questions.

Notes of telephone conversations were admitted as hearsay in respect of Director 1 and Director 2 of Fit2Fly 24/7 for two periods, six dates throughout 2022 and then through the last week of August 2024. Director 1 initially cooperated with the Council on the telephone but stated that for reasons of health she could no longer assist and provided the details of Director 2.

Director 2 responded to telephone calls but did not sign or return the draft statement that was sent to him by the Council despite repeated requests. The Council produced several File notes detailing attempts to contact Director 2 and his evasion of this contact, illustrating his unwillingness to assist with the proceedings and the Case Presenter informed the Committee that attempts continued throughout the hearing. During a telephone conversation with Director 2 on the 22 August 2024 it was inferred that Director 2 had previously informed Mr 1 that the courier service with the pharmacy had ceased around December 2021. This date was put to him again when he could not recall when the service was stopped, and he agreed it would have been around that time. At the time of this telephone call Director 2 said he was at a social function which was quite noisy.

The Registrant, Mr Lakhani, Pharmacist, gave evidence on his own behalf and attested his witness statement received by the Council 21 August 2024. His witness statement sets out his personal background and involvement in the Sai Pharmacy and Covid-19 testing. He states that he did not work directly with Circular 1 Health but contracted with Fit2Fly24/7 who used Circular 1 Health Laboratory. He states that PCR samples were collected by couriers for Fit2 Fly24/7 in response to his WhatsApp messages to Directors 1 or 2, couriers came to the pharmacy sometimes twice a day. Certificates were emailed direct by Fit2Fly24/7 not by him. He clarified in oral evidence that this certificate must have been issued by the laboratory, Circular 1 Health. His statement confirms that he printed certificates in respect of LFTs, which were conducted in the Pharmacy without the need for samples to be sent to a laboratory.

## Determination

### Introduction

1. This is the written determination of the Fitness to Practise Committee at the General Pharmaceutical Council ('the Council').
2. This 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 outcomes 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 16 July 2024 from the Council headed ‘Notice of Hearing’ addressed to the Registrant and sent to their registered email address as noted on the Register.
7. The Committee was satisfied that there had been good service of the Notice of Hearing (‘Notice’) in accordance with Rules 3 and 16 of the Rules.

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

8. The Committee heard a preliminary application from the Case Presenter under Rule 41 to amend the particulars by adding two further particulars 8 and 9 as follows:

*8. On or around 22 February 2022, purported to provide a PCR testing service to customers of the Pharmacy when in fact samples were not being sent to a laboratory as required.*

*9. Between February 2021 and February 2022, did not ensure that testing services provided by the Pharmacy were accredited with UKAS and / or make an application to UKAS.*

9. The Case Presenter submitted that the proposed allegation 8 draws out what is hinted at in existing allegation 4 and seeks to broaden that concern. The proposed allegation 9 similarly defines the overall concern in the particulars currently set out in allegation 6 that the Pharmacy was providing services which required accreditation for a period of 12 months.
10. The Case Presenter submitted that the amendment was necessary in respect of allegation 8 to ensure that the conduct alleged was not undercharged. The existing allegations 4 and 5 allege dishonest representations made to the GPhC Inspector about the PCR testing process, and the additional allegation encapsulates the gravamen of the conduct, that samples were not being sent off to a laboratory for testing as required.
11. The Case Presenter asserted that the amendment in respect of allegation 9 avoided a risk of undercharging in that it articulated the fact that the alleged failure to obtain the required accreditation had persisted for 12 months. This accreditation was essential in a time of national crisis when the public were being allowed to travel after periods of lock down under strict infection control, maintained through regulated testing. Public confidence was maintained by the regulation of the process.
12. The Case Presenter submitted that the Registrant was not prejudiced by these amended allegations as the information from which they arose was known to him since February 2022 and were disclosed in the bundle. The allegations did not present new issues which would require further investigation and preparation.
13. In response to a question from the Chair, asking why the amendments were sought so late on the first day of the principal hearing, rather than along with other amendments at the case management meeting on 29 May 2024, the Case Presenter explained that having taken over the case last week he had reviewed the

evidence and decided that these allegations better capture the concerns disclosed on the papers.

14. The Case Presenter submitted that there was no prejudice to the Registrant as he has already had an opportunity to consider and explain his position in relation to these matters and in his witness statement, he accepts he did not apply for UKAS accreditation, but he maintains that PCR samples were being sent to Fit2Fly 24/7.
15. In response to a question from the Lay member about whether the addition of allegation 8 would be overcharging, the Case Presenter asserted that this was not a duplication of conduct already caught by allegations 4 and 5 which at 4.2 concerned a specific articulation of what the Inspector was told.
16. The Registrant was offered time to prepare his responses and to marshal his arguments but was content to proceed to oppose the proposed amendments. He submitted that the additional allegations did prejudice him. The proposed allegations were speculative, premature and very late in being made. The Registrant was further prejudiced in preparing, assessing and addressing these allegations as the hearing bundle and supplementary bundle proposed by the Council had only been made available to him at 10 o'clock that morning.
17. The Registrant submitted that the Council has had plenty of time to prepare and has already benefitted from amendments made to the allegations at a case management meeting conducted in his absence.
18. The Registrant submitted that he was at a distinct disadvantage in that he was unrepresented as he could not afford legal representation since being suspended and these late amendments increased the disparity between the parties. He submitted that substantial delays had been caused by the latitude given to the Council to attempt to contact a witness from Fit2Fly 24/7 to support allegation 8.

19. When asked by the Case Presenter to specify the impact on his ability to prepare the case in respect of the new allegations the Registrant indicated that the Council had two and a half years to get the allegations right and felt that they were being given repeated bites at the cherry.
20. The Committee accepted the advice of the Legal Adviser.
21. The Committee was of the view that the particulars should be amended to add the two further allegations. The Committee recognised that the application was made very late but that the power to amend the allegations where necessary extends to any stage before making a finding of fact.
22. Having listened carefully to the submissions of both parties the Committee accepted that the addition of allegation 8 was a clarification of and grew from allegations 4 and 5, it was not a change in the nature of the case which would require further investigation. The PCR testing was already a matter in dispute and was addressed by the Registrant in his witness statement.
23. The addition of allegation 8 would address the risk of undercharging in respect to the conduct alleged and adequately reflect the nature of the concerns underlying these proceedings.
24. The amendment would not cause unfairness or hamper the way that the Registrant prepared or presented his case as this was already a topic on which the Registrant would have to respond.
25. In respect of allegation 9, the Committee was of the view that it could make this amendment bearing in mind the primacy of the public interest without prejudicing the fairness of the proceedings. The new allegation identified the period of omission which was important in respect of public confidence and the public interest in effective regulation.

26. The Committee noted that the allegation was raised by the Inspector with the Registrant in February 2022, who had then addressed it in his witness statement. However, the Committee was cognisant that the Registrant was unrepresented and would be afforded time throughout the proceedings to ensure that he could prepare his arguments.

#### **Application to admit further evidence**

27. The Case Presenter made an application under Rule 18(5) to admit the supplementary bundle and the photographs labelled SM/06 into evidence.
28. The Registrant did not oppose the application but made reference to the hearsay contained in the supplementary bundle and complained about the hearsay that had been admitted at the Case Management Meeting on 29 May 2024. The Registrant made observations about how late the material was produced. The Case Presenter submitted that the decision of the Committee at the Case Management Meeting was binding on the Committee at the Principal hearing under FTP rule 21(3).
29. The Registrant made an application under Rule 18(5) to admit the photographs of a WhatsApp message labelled RM/03 into evidence and this was not opposed by the Council.
30. The Committee accepted the advice of the Legal Adviser.
31. The Committee decided to admit the further documents into evidence, determining that the material was fair and relevant, and the admission of the material did not prejudice the fairness of the proceeding.
32. The Council reminded the Committee that it could consider whether to direct the issuing of a witness summons under Rule 62(1)(b) Pharmacy Order 2010 to secure the attendance of Director 2 at the hearing. The Registrant informed the Committee that this would cause delay to the proceedings which would have to be adjourned

resulting in unfairness to him. He expressed frustration at the length of time the Council had to secure this evidence and the numerous attempted contacts with Director 2. The Committee considered fairness to both parties and the wider public interest and did not pursue that course.

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

33. The Registrant denied all the particulars 1-9.
34. The Committee went on to receive evidence and submissions regarding the remaining disputed particulars.

### **Application on No case to answer**

35. After the Council had closed its case on the facts the Committee received and considered an application from the Registrant under rule 31 (8) that there was no case to answer in respect of all the particulars. The Case Presenter made submissions in response on every allegation.
36. The Committee received and accepted legal advice. The Committee was directed to consider the evidence in the round including the witness statement served by the Registrant.
37. The Committee took into account the guidance in the case of R v Galbraith 1 W.L.R. 1039 and asked itself whether the evidence adduced so far placed the case into one of three categories, two of which were relevant to this application:
  - (1) That there was no evidence that the Registrant had carried out the acts or omissions alleged in any / all of the particulars;
  - (2) That there was some evidence but that it was of a vague or tenuous character such that no tribunal, taking the evidence at its highest and properly directing itself could find the particulars proven on the balance of probabilities.

38. The Committee was mindful that taking the Council's evidence at its highest does not mean selecting only those parts of the evidence that support the Council's case, and we must consider all of the evidence as a whole.
39. In this case we consider that there was sufficient evidence such that a Committee could find the particulars proven on the balance of probabilities. The Committee carefully considered the evidence and submissions made by the Registrant and the response of the Case Presenter.
40. The reasons for rejecting the Registrant's application for no case to answer in respect of each particular is as follows:
- i. Particular 1: Sufficient evidence is found in the evidence of the Inspector, Ms 2, both her witness statement at page 32/33, paragraph 16 (main GPhC bundle) and her oral evidence which stated that she had identified the used swab which had been returned to its wrapper and had discussed it with the Registrant. Supporting evidence for this is found in the Registrant's witness statement at page 89, paragraph 36 where he describes this as an anomaly, " the swab test for a lateral flow or rapid antigen test (for a patient flying into Italy) observed by the inspector to be on the shelf and not in the sealed container, the swab observed by the inspector was indeed an anomaly, and I acknowledged that it should not have happened."
  - ii. Particular 2.1: Sufficient evidence is found in the photographs exhibited by the Inspector at SM/ 03 which seems to show an LFT swab in a wrapper with a PCR application form.
  - iii. Particular 2.2: The evidence to support this can be found in the statement of the Inspector at paragraph 10 at page 31 which was confirmed in her oral evidence. Additionally, the Committee noted the

- evidence of the Registrant at page 88, paragraph 32 which states “It is correct that we did not keep a record of the patients who were tested.”
- iv. Particular 2.3: The evidence to support this is provided by the evidence of the Inspector at page 31, paragraph 10, when asked if he had any records of the courier service, he stated that he did not. The Registrant at Page 91 paragraph 43 of his witness statement states that he didn’t think it was necessary in the circumstance because all the PCR testing swabs, and paperwork was being provided to Fit2Fly24/7 via courier.
  - v. Particular 2.4: Evidence to support this is found at exhibit SM/01 which is a copy of the blank certificate produced by the Registrant at the Inspector’s request. Further evidence as identified in paragraphs 25 and 26 of the Registrant’s statement at page 86 in which he states that after completing the test of the sample and waiting for the result of the LFT, he would complete the certificate and print it out for the patient.
  - vi. Particular 2.5: Evidence to support this is found at page 32, paragraph 14 of the Inspector’s evidence in which she states that she witnessed a customer being asked to pay cash for his Fit to Fly test for Italy. Her evidence was that she questioned the cashier about it and the process for how this would subsequently be rung in was explained to her. Further evidence is found in the Registrant’s statement at page 89, paragraph 35, where he states that he was taking cash payments for tests and paying Fit2Fly24/7 from this cash.
  - vii. Particular 2.6: The evidence to support this is found at page 32, paragraph 14, of the Inspector’s statement and page 89, paragraph 35 of the Registrant’s witness statement where he states that cash for tests would be rung into the till as “no sale” for accounting purposes.
  - viii. Particular 3.1: The Committee considered that this relates to the allegation at 2.1, and that the completed swab test request form for a PCR test was in the same plastic envelope as an LFT swab wrapper shown in the photograph SM/03 produced by the Inspector. The evidence to show that the Registrant knew that an LFT test would not be sufficient for a PCR certificate is the evidence at page 86 paragraphs 25 and 26 of the

Registrant's witness statement in which he describes the process for LFT testing.

- ix. Particular 3.2: The Registrant's evidence on page 86, paragraph 4 is that he did not send any samples for testing to Circular 1 and that he had no contractual relationship with them, just with Fit2Fly24/7 who used Circular 1 Health services for PCR testing.
- x. Particular 3.3: There could be sufficient evidence to support the allegation that the Registrant knew that Covid-19 tests conducted at the Pharmacy were not/ would not be tested by Circular 1 Health in respect of the Particulars outlined at 2 because no LFT tests were submitted to a lab as stated at page 89 of the Registrant's witness statement at paragraph 36.
- xi. Particular 3.4: There could be sufficient evidence on the face of the document that the certificate that the Registrant was producing was not legitimate. It contained reference to testing by Circular 1 and has Fit2 Fly24/7 Limited's logo as well as reference to the DHSC. There was further evidence in Ms 3's hearsay statement on page 68 paragraph 8, that the template certificate (SM/01) had not been used since August 2021.
- xii. Particular 4.1: There could be sufficient evidence in the witness statement of the Inspector who described the PCR test kits she saw at the Pharmacy allied to the witness statement of the Registrant who explains the process of using the Fit2Fly 24/7 PCR kits in his witness statement and how the couriers would replace the completed tests that they were picking up with new test kits.
- xiii. Particular 4.2: The evidence in support of this particular was provided by the Registrant in his witness statement over several paragraphs in which he describes the process of how the swabs he took were collected by Fit2Fly24/7 Couriers and processed by the laboratory Circular 1. Fit2Fly24/7 issued the certificate directly to the customer. The Committee also considered the photograph at SM/03 of a poster

advertising Covid Testing Services detailing the Fit2Fly24/7 website on the pharmacy's window.

- xiv. Particular 5: An allegation of dishonesty in respect of the representation that the PCR test would be processed by Fit2Fly24/7 could be made out given the date that Ms 3 says that the service provided to this Pharmacy ended on 15 December 2021. This is supported by Director 1 in the hearsay evidence exhibited by Mr 1 at page 45 and in the hearsay evidence regarding Director 2 on a file note produced by the Council caseworker page 2 (GPhC Supplementary bundle).
- xv. Particular 6.1: this could be proved on the face of the email at page 39 from the Registrant sent to the Inspector on 24 February 2022 which states "I did not realise that I needed to have UKAS accreditation for taking the swabs."
- xvi. Particular 6.2: this could be proved on the face of the email at page 39 in that the email sent by the Registrant to the Inspector states "I have now applied for this. We will not be starting the service until we have full accreditation and also robust audit processes in place."
- xvii. Particular 7: the Committee considered that the conduct outlined at 6.1 and 6.2 could be dishonest because R/1 (7 pages of emails with screen shots) indicate that the Registrant had started the process of self-declaration (part one of the accreditation process) during the afternoon following the Inspector's visit on the 22 February 2022 but did not continue it which is confirmed at page 9, paragraph 41 of the Registrant's witness statement. Ms 1 confirmed in her statement at page 69 paragraphs 6-8 and in her oral testimony that there was no record of any application being made for UKAS accreditation by the Registrant.
- xviii. Particular 8: The evidence as a whole, including the photographs at SM/3, paragraph 12 of the Inspector's witness statement at page 32 which relates to questioning counter staff at the Pharmacy about their knowledge of the courier service. The lack of records of either the PCR test customers or courier service details found during the inspection could support the allegation that the Registrant was purporting to

provide a PCR service. The Registrant's evidence in his witness statement on page 87, paragraph 29 is that he was undertaking 5 -10 tests per day which were being collected by Fit2Fly 24/7 couriers and tested by Circular 1 Lab. Director 1 and 2 of Fit2Fly 24/7 both deny working with the Pharmacy since mid/late December 2021.

- xix. Particular 9: The evidence which supports this allegation is that of the email sent by the Registrant to the Inspector on the 24 February 2022 which states "I did not realise that I needed to have UKAS accreditation for taking the swabs." This is supported by the evidence of the Registrant on page 92 at paragraph 41 of his witness statement in which he states, "when I sent the email, I had already stopped providing the covid testing service and would not have re-started it without the UKAS accreditation." Ms 1 confirmed that there was no record of any application being made for UKAS accreditation by the Registrant.

## **Background**

41. The Registrant was the Superintendent of the Pharmacy and Responsible Pharmacist at Sai Pharmacy, 150- 152 High Street North, East Ham, London, E6 2HT on 22 February 2022 when it was subject to an inspection by the Council. The inspection of the Pharmacy was triggered by a concern reported to the Council regarding the Pharmacy's Covid-19 testing services.
42. The Registrant confirmed that he was managing and providing the Covid-19 testing and vaccine service at the Pharmacy. The Inspector observed the Registrant conduct such tests in the consultation room. This process included confirming the patient's details on the form they had completed, including their passport number. A swab was taken from the throat and nose of the patient and packed away, placing the swab on a shelf behind the consultation room door.
43. The Inspector noted some completed out of the packaging swabs on a shelf behind the consultation room door, three had been completed using lab kits, but one had a swab which was placed back in a paper wrapping. The Registrant stated it was a

Rapid Antigen Test (i.e. an LFT). He explained the swab had been placed back in its wrapper and not tested because he was busy, acknowledging that this was not the correct procedure. He was also unable to confirm if this process would produce an accurate result.

44. The Registrant was asked if he retained copies of any certificates that he supplied for the Rapid Antigen Service (LFT). He said that he did not but explained that certificates were generated using his laptop and printed a blank copy of a certificate for the Inspector's information.
45. This blank certificate displays the logo of Fit2Fly 24/7 Ltd. It is headed "Approved certificate for international travel". It also includes the details of Circular 1 Health Ltd, describing the testing service the company provides, and accreditation awarded by Public Health England and UKAS (United Kingdom Accreditation Service). Fit2Fly 24/7 Ltd are a medical equipment supplier who work alongside accredited laboratories.
46. The Registrant explained that the results for the PCR testing service were emailed directly to the patient in contrast to the Rapid Antigen Service (LFT) which required him to print and provide the certificate to the patient.
47. When asked by the Inspector whether he was registered with UKAS he replied that he did not know he had to be. He was advised by the Inspector to make that enquiry directly to UKAS.
48. The Inspector asked two dispensers at the pharmacy about the Covid- 19 testing process. Neither of the dispensers took any part in the testing service. They were asked by the Inspector how often the courier collected the samples and they did not know. The Registrant told the Inspector that he did not hold any records of Covid 19 tests carried out at the Pharmacy, or details of the courier services used. He also confirmed he did not have access to the online platform of the laboratory.
49. The Inspector observed a customer paying for what she thought was a Covid-19 test in cash at the request of a member of staff at the Pharmacy. The Inspector asked

why this was the case and was told by the staff member that she would do it later and ring it in as a no sale, which she was then observed doing.

50. On 24 February 2022 the Registrant emailed the Inspector and confirmed that following her visit to the Pharmacy, he had stopped all travel tests with immediate effect. He explained that he was not aware that he needed to obtain UKAS accreditation to perform this service. He had now applied for this but would not restart the service until they had “full accreditation and also robust audit processes in place”.
51. An enquiry at UKAS identified no records of any application for accreditation being submitted by the Pharmacy and confirmed that the Pharmacy was not in fact accredited.
52. Ms 3, Service Director for Circular 1 Health, confirmed that the pharmacy had been working with one of Circular 1’s providers Fit2Fly24/7Ltd but had stopped working with them on 15 December 2021. She stated that Fit2Fly24/7Ltd were a medical equipment supplier who work alongside laboratories accredited by UKAS. She described the process in which pharmacies would order laboratory testing kits via a supplier such as Fit2Fly24/7Ltd who would then utilise the services of accredited laboratories such as Circular 1 Health to conduct the laboratory testing.
53. Ms 3 stated that the blank certificate the Registrant provided the Inspector during her visit to the Pharmacy was a very old template and Circular 1 Health stopped using this certificate template in or around August 2021. This certificate template also related to rapid antigen tests (LFTs) and Circular 1 Health utilise a completely different certificate for such tests. Circular 1 Health did not ‘resell’ this service, and testing was only undertaken by the patient at home.

### **Decision on Facts**

54. In reaching its decisions on facts, the Committee considered the documentation listed at the start of this determination, oral evidence and the skeleton argument submitted by the Council and submissions made by the Council and the Registrant.

55. The Case Presenter repeated the Council submissions made in response to the Registrant's submission of no case to answer and expanded those submissions to include the evidence now heard from the Registrant:

- There is cogent and reliable evidence from the Inspector who observed what she thought was a used swab taken for a Covid-19 test put back into its packaging during her visit to the Pharmacy on 22 February 2022.
- The evidence of the Inspector on information given to her by the Registrant during the inspection, and on his admissions in his witness statement for the hearing, are sufficient to prove Particular 2, and particular reliance was placed on the template LFT certificate printed for the Inspector.
- The evidence of Ms 3 is that this type of certificate was not used for LFTs and was out of date in any event; also, that LFT tests would be undertaken in a patient's home and the service was not 'resold'.
- The use of the template certificate by the Registrant was inappropriate and illegitimate. The Registrant would have known that Circular 1 Health had no involvement in the process and therefore on its face the certificate was misleading.
- The Registrant showed the Inspector a PCR testing kit and told her that they used the 24/7 Laboratory.
- Telephone conversations with Directors 1 and 2 indicate that the Pharmacy had not used Fit 2 Fly 24/7's services since December 2021 so the Registrant knew that it was unlikely that any swab kits used by the Pharmacy on 22 February 2022 would be processed by Fit 2 Fly 24/7, and his comments to the Inspector were not true.
- Cash payments, a lack of records and no details of couriers were all evidence of the Registrant ensuring that there was no audit trail of his conduct during that period.
- The email from the Registrant to the Inspector dated 24 February 2022 in which he states that he did not realise he needed UKAS accreditation to "take swabs",

and that he had “now applied for this” is tangible evidence to prove allegations and they do not appear to be factually in dispute.

- Ms 1’s witness statement demonstrates that the Registrant had not contacted UKAS on or around 24 February 2022 to seek the necessary accreditation to perform a Covid-19 fit to fly service; so he was aware that the statement contained in his email to the Inspector on 24 February 2022 indicating that he had contacted UKAS was not true.
- On 22 February 2022 the Registrant told the Inspector that he was conducting PCR tests and that these were couriered to Fit2Fly 24/7 for testing at a laboratory. The Registrant has produced no documentation to show that this was taking place in February 2022 and the evidence from the Directors of Fit2Fly24/7 states that the company last had contact with the Pharmacy before Christmas 2021.
- The photographs of WhatsApp messages side by side could indicate that the Registrant had continued access to the messages he says were to arrange couriers and could have produced that evidence. The format and technical detail of those photographs indicate that they are live photographs, rather than a photograph of a screen shot and casts the Registrant’s credibility in doubt.

56. The Committee heard submissions from the Registrant which reflected those made in respect of his submission of no case to answer:

- He had acted in good faith in his contract with Fit2Fly24/7 and had no reason to doubt that the couriers that he booked through them were not conveying the used PCR swab kits he purchased from them to the laboratory at Circular 1 Health for testing.
- It was not disputed that Fit2Fly24/7 were in a contractual relationship for laboratory services with Circular 1 Health.
- The certificate he used for LFT was provided by Fit2Fly24/7 and the Council had not sought to verify this. The fact that it was an out-of-date certificate just meant no new version was provided for him by Fit2Fly24/7 as it should have been as the third-party supplier.

- LFT was suitable for travel to some countries during the period, it was a changing picture.
- The photograph of the swab wrapper is inconclusive, it does not show it was a used swab.
- He could not issue a PCR certificate, only a lab could do that and add a QR code which could be read at an airport.
- There were no patient complaints about the certificates issued.
- He had found the accreditation process confusing and had begun the first stage as evidenced by the screen shots produced as R/1 and it was clear he could carry on providing testing services until his accreditation came through, but he chose not to pursue it.
- Cash payments were done as the pharmacy was facing administration and some wholesalers required cash payment. Cash payments were also requested by Fit2Fly towards the end of 2021. The Inspector did not ask for till receipts which he could have provided.
- He submitted that the Council had not discharged the burden of proof with a case based on speculation and hearsay. He was doing his best in good faith in a rapidly changing period.

57. The Committee accepted the advice of the Legal Adviser.

58. When considering each particular of allegation, the Committee bore in mind that the burden of proof rests on the Council and that particulars are found proved based on the balance of probabilities. This means that particulars will be proved if the Committee is satisfied that what is alleged is more likely than not to have happened.

## **Particulars of allegations**

### **Particular 1**

*1. On 22 February 2022, placed a used swab taken for a Covid-19 test back into its packaging.*

The Committee took into account the relevant evidence from the Case Presenter and the Registrant and their submissions on that evidence. The Committee was of the view that the Registrant accepted this allegation in his witness statement at page 89 paragraph 36 in that he acknowledged it was wrong not to undertake the test immediately and that he had recalled the patient to retake the swab. This accorded with the witness evidence of the Inspector. The Inspector stated that the Registrant had explained the swab had been placed back in its wrapper and not tested because he was busy, acknowledging that this was not the correct procedure. The Registrant put to the Inspector in cross examination that the photograph at SM/03 showed a wrapper but not the contents of a swab. The Inspector maintained that it was a used swab and although the Committee agreed that the photograph was not clear it found the Inspector's testimony to be credible. The Committee noted that the Registrant had produced a Government Guidance document at the start of the hearing which indicated that the testing could be undertaken up to an hour after the swab having been taken, but the Registrant had not been aware of this on the 22 February 2022.

**This particular is found proved.**

## **Particular 2**

*2. On unknown dates between 11 February 2022 and 22 February 2022:*

*2.1. used Lateral Flow Tests ("LFTs") for Covid-19 'Fit to Fly' tests in place of Polymerase Chain Reaction ("PCR") tests*

The Committee analysed the evidence in respect of this allegation and could identify no direct evidence that this was the case, and that there was insufficient evidence from which to draw an inference that this was more likely than not. The Inspector accepted in her evidence that the requirements for flying changed for some countries so that proof of a negative LFT test was sufficient. The photographs exhibited as SM/03 indicate that the same form was used by the pharmacy to obtain patient details, called a Swab Test Request. This same form was used for both LFTs

and PCR tests. The Committee took into account the Registrant's evidence that he had two different kits, LFT kits which the pharmacy used for testing at the pharmacy and issued a certificate with the result, and PCR kits which were sent off for laboratory testing once a swab had been taken. The two different testing kits were identified by the Inspector at the pharmacy.

**This particular is found NOT proved.**

*2.2. did not keep a record of Covid-19 tests completed at the pharmacy*

The Committee considered the evidence of the Inspector and her account of the conversation that she had with the Registrant in which he explained to her that he did not keep records of tests done at the Pharmacy. In oral evidence the Registrant said that he had kept the swab test forms for LFT tests completed at the pharmacy and explained that they had been stored in the basement and subsequently destroyed by the new owners when they took ownership of the pharmacy, before he could access them. The Registrant did not provide this explanation in his witness statement received by the Council 21 August 2024. The Committee rejected this explanation as not credible, given the timing of the investigation and the intervening months when the records could have been retrieved, and because the Registrant had the opportunity during the Inspection to provide those records. The Committee was also persuaded by the Registrant's reflection in his witness statement that he should improve his record keeping.

**This particular is found PROVED**

*2.3. did not keep records of courier services used for Covid-19 tests*

The Committee accepted the evidence of the Inspector in which she states that she asked the Registrant if he kept records of the courier service, and he replied that he did not. The evidence in her witness statement was taken from her contemporaneous note of the Inspection on 22 February 2022. This evidence accords with the evidence of the Registrant in his witness statement of 21 Aug 2024 in which

he states that he arranged for courier collection via WhatsApp with Director 2 at Fit2Fly24/7 and these messages had been deleted.

**This particular is found PROVED**

*2.4. Issued Fit to Fly certificates to patients certifying Circular 1 Health testing service had found their rapid antigen test negative for Covid-19*

The Committee accepted the evidence of the Inspector who stated that she asked for, and was provided with, a blank certificate that would be completed and provided to customers with the results of an LFT by the Registrant. This was confirmed by the Registrant in his evidence. The Committee analysed the certificates exhibited by the Inspector SM/01 and SM/03(an unredacted version) and noted that the certificate states on its face that Circular 1 Health is the testing laboratory. The Registrant confirmed that LFT tests were completed at the pharmacy and no swabs for LFTs were sent to Circular 1 Health for analysis. Ms 3 in her hearsay statement states that Circular 1 Health did provide an LFT service for customers to use at home, and that the laboratory certificated those self- test results but that Circular 1 Health did not resell this service to third parties.

**This particular is found PROVED**

*2.5. accepted only cash for Covid-19 tests payments*

The Committee accepted the evidence of the Inspector in respect of what she witnessed when a customer went to pay for an LFT and her note of the conversation with the cashier. This evidence was not refuted by the Registrant who confirmed in his evidence that the pharmacy was taking cash payments for tests and was paying Fit2Fly24/7 from this cash, as he was other wholesalers, because the pharmacy was entering administration.

**This particular is found PROVED**

*2.6. recorded the cash received for Covid-19 tests as no sale*

The Committee accepted the evidence of the Inspector in respect of what she witnessed when a customer went to pay for an LFT and her note of the conversation

with the cashier. This evidence was not refuted by the Registrant who confirmed in his evidence that cash for tests would be rung into the till as “no sale” for accounting purposes.

**This particular is found PROVED**

### **Particular 3**

*3. Your conduct at 2.1 to 2.6 above was dishonest in that you:*

*3.1. knew that a PCR test was required for Fit to Fly tests*

The Committee assessed all the evidence it had received and determined that a PCR test was not always required for a Fit to Fly test. The evidence of both the Inspector and of Ms 1 indicated that LFT tests were applicable for entry to some countries. Ms 1 explained that the Department of Health made those stipulations. The Inspector accepted in her evidence that the requirements for flying changed for some countries so that proof of a negative LFT test was sufficient.

**This particular is NOT PROVED**

*3.2. Did not send Circular 1 Health Limited any Covid-19 samples for testing from the Pharmacy*

The Committee considered the evidence provided by Ms 3 of Circular 1 Health in her statement, admitted as hearsay, in which she describes the process by which the Laboratory receives samples. She clarifies that she would not expect a pharmacy to deal directly with the Laboratory but rather that pharmacies would order laboratory testing kits via a supplier such as ‘Fit2Fly24/7Ltd’ who then utilise the services of accredited laboratories such as Circular 1 Health to conduct the laboratory testing. Although as this allegation is worded, there was not a direct contractual relationship between Circular 1 Health and the pharmacy, the Committee could not infer dishonesty from the fact that the relationship was via a third party. The Committee accepted the hearsay evidence of Ms 3 in which she confirmed that the pharmacy had been working with one of Circular 1’s providers ‘Fit2Fly24/7Ltd’. The Committee accepted the Registrant’s evidence that PCR swab kits, taken from patients at the

pharmacy were picked up by a Fit2Fly24/7 courier and sent to Circular 1 Health Laboratory for testing. The Inspector did not wait to see if the courier did arrive on the day of the inspection.

**This particular is NOT PROVED**

*3.3. knew that Covid-19 tests conducted at the Pharmacy were not/ would not be tested by Circular 1 Health*

The Committee considered the witness evidence of the Registrant who both in oral evidence and in his statement confirms that the only tests conducted at the pharmacy were LFT. The swabs taken for LFT would not be tested or certified by Circular 1 Health, they were tested and certified by the Pharmacy themselves. It was only swabs taken for a PCR test that were sent to the Laboratory Circular 1 Health via Fit2Fly24/7.

***This particular is PROVED***

*3.4. knew that the Fit to Fly certificates provided to patients were not legitimate.*

The Committee did not accept the Registrant's evidence that he had never examined the details of the certificate that he was providing and used it in good faith as a legitimate form of verification received from his supplier Fit2Fly24/7. The Committee thought it was not credible that a health professional providing an important service repeatedly over a long period, at a time of national crisis would not have checked that the certification he was printing off was accurate. A cursory examination of the certificate would reveal that the LFT test conducted by the Pharmacy could not be verified by Circular 1 Health Laboratory as they would never receive either swab or completed cassette or the result. The Department of Health logo and the information about Circular 1 Health added a veracity to the certification which was not legitimate in respect of LFTs. There was no reference to Sai Pharmacy or that the testing had been carried out at those premises.

***This particular is PROVED***

**Particular 4**

*4. In relation to Covid-19 PCR tests, on 22 February 2022 you:*

*4.1 used a swab kit from Fit2Fly 24/7 Limited at the Pharmacy.*

The Committee accepted the Registrant's evidence that he did use a swab kit from Fit2Fly24/7 on the 22 February 2022. The Committee accepted the evidence of the Inspector who said she was shown the swab kits and had seen both LFT and PCR kits. The Committee accepted her evidence that she was shown a PCR kit by the Registrant which was in a grey plastic bag and had a swab with a hard cover.

***This particular is PROVED***

*4.2 informed a GPhC Inspector that the Pharmacy used "24/7" services to process tests.*

The Committee accepted the evidence of the Registrant that he had explained the process to the Inspector and that Fit2Fly24/7 would take the sample to the laboratory. The Committee also accept the evidence of the Inspector that when she asked what Laboratory was used, he said 24/7. The Committee took into account the Registrant's witness statement which states that the Inspector has summarised their discussion about the process in her statement paragraphs 8-19 and does not appear to dispute what she has noted.

***This particular is PROVED***

**Particular 5**

*5. Your conduct in at 4.1 and 4.2 above was dishonest as the pharmacy had not used the Covid19 testing services offered by Fit2Fly24/7 Limited since 15 December 2021*

The Committee reminded itself of the legal advice it received on dishonesty:

1. Dishonesty is a state of mind which, unless admitted, can only be inferred from conduct. In many cases a committee is very well placed, with its experience of the world and common sense, to determine what is dishonest by ordinary decent standards. If the Tribunal considers that greater guidance as to "dishonesty" is necessary, it may consider the case of *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*.
2. In the *Ivey* case the Court held that the correct test of dishonesty is for the Tribunal:

(i) To ascertain (subjectively) the state of Registrant's knowledge or belief as to the facts.

(ii) The reasonableness of the belief is a matter of evidence going to whether he genuinely held the belief, but it is not a requirement that the belief must be reasonable; and

(iii) To then consider whether that conduct was dishonest by the (objective) standards of ordinary decent people.

There is no requirement that Registrant must appreciate that what he has done was, by those standards, dishonest.'

The Committee has examined carefully all the evidence in respect of the Registrant's state of mind. In order to prove dishonesty in respect of this allegation, the Council would have to prove on the balance of probabilities that the testing service with Fit2Fly 24/7 had ended on 15<sup>th</sup> December 2021. The evidence for that date comes from the statement of Ms 3 which was admitted as hearsay at a Case Management Meeting on 29 May 2024. Ms 3 had provided a witness statement which she had signed and dated 7 September 2022, but then declined to engage with proceedings, so her evidence on this point could not be clarified. The Committee noted that she did not append any business documents to her statement.

The reason it was admitted as hearsay was that the Case Management Committee thought it could provide context to the business relationship of the Registrant. The Case Management Meeting Committee was of the view that the Committee at the Principal Hearing could give the statement whatever weight it deemed appropriate, balancing it with the Registrant's and other evidence available to it at the hearing. This Committee has not had the opportunity to clarify with this witness how she arrived at that date that services ended with the Pharmacy. Questions asked of Mr 1, who had taken her witness statement, did not sufficiently clarify the point. The Committee noted that this was an important point as Circular 1 Health was not in a direct contractual relationship with the pharmacy. The date was referred to by Director 1 and Director 2 in telephone attendance notes with the Council case team. However, neither of these witnesses had engaged with the process and no signed

witness statements had been produced although a draft statement had been produced by the Council case team and sent to Director 2. The Committee felt that there was a risk that the date had been led by the case team as could be seen from a telephone attendance note of 22 August 2024 between the caseworker and Director 2.

The Registrant disputed the fact that his relationship with Fit2Fly24/7 ended on 15 December 2021 or before Christmas of that year. His evidence was that he was continuing to use their services until immediately after the Inspection on the 22 February 2022, when he stopped providing PCR tests until he had rectified his position in respect of accreditation. He explained in oral evidence that one service with Fit2Fly24/7 did cease in December 2021, which was the day 2 and 8 service. The Committee noted that this was the first time that this was referred to as a date that an arrangement with Fit2Fly24/7 ceased. The Committee balanced the disputed hearsay evidence with that of the Registrant and decided that the evidence was not sufficient to discharge the Council's burden.

**This particular is NOT PROVED**

#### **Particular 6**

*6. On 24 February 2022 you notified a GPhC Inspector by way of email that you:*

*6.1 did not realise that you needed United Kingdom Accreditation Service (UKAS) accreditation for taking swabs*

The Committee took at face value the email from the Registrant to the Inspector dated 24 February 2022 which states "I did not realise that I needed to have UKAS accreditation for taking the swabs." This was supported by his oral evidence and the fact that he stated that he began researching and implementing the accreditation process on the same day following the Inspection.

**This particular is PROVED**

*6.2 had now applied for this accreditation*

The Committee considered the objective documentary evidence in the form of the email sent by the Registrant to the Inspector on 24 February 2022 which states “I have now applied for this. We will not be starting the service until we have full accreditation and also robust audit processes in place.” This Committee considers that this evidence is unequivocal.

**This particular is PROVED**

**Particular 7**

*7. Your conduct at paragraph 6.2 was dishonest in that you knew you had not applied for the relevant accreditation with the UKAS.*

The Committee considered that the conduct outlined at 6.2 was dishonest because the exhibit R/1 (7 pages of emails with screen shots) indicate that the Registrant had started the process of self- declaration (part one of the accreditation process) during the afternoon following the Inspector’s visit on the 22 February 2022 but did not continue it. This was confirmed by the Registrant in oral evidence in which he indicated that he had in fact decided not to pursue the application by the 23 February 2022. Ms 1 confirmed that there was no record of any application being made for UKAS accreditation by the Registrant.

**This particular is PROVED**

**Particular 8**

*8. On or around 22 February 2022, purported to provide a PCR testing service to customers of the Pharmacy when in fact samples were not being sent to a laboratory as required.*

The Committee carefully scrutinised the evidence in respect of this allegation. It was the basis of the concern reported to the Council although no direct evidence was provided in respect of this. It was not specifically put to the Registrant during the inspection. The evidence to support the allegation is circumstantial; namely, the lack of record keeping, the lack of courier details, the cash payments and the hearsay evidence in respect of the date of cessation of services with Fit2Fly 24/7. The Committee noted that the staff who were questioned about couriers were not asked

if couriers ever came to collect swabs at the pharmacy but were asked what time they came. The answer was that they did not know, not that they never came. The staff that were asked had predicated their responses with the caveat that they were not involved in the testing service.

The Committee noted that the cash payments had been explained at the time of the inspection and recorded by the Inspector at the time. The lack of record keeping in respect of PCR tests was explained by the Registrant. He stated that the completed swab test request forms were included in the sealed bag with the swab in a hard cover. This was so that each swab could be readily identified, and the correct passport and customer details included on the certificate and a QR code generated so that the PCR certificate could be sent to the patient. The Registrant had no involvement in the process beyond taking the swab for the patient to minimise user error. He did state in oral evidence that he should have taken a photocopy of each completed swab test request form so that the pharmacy had a complete record, but he had not thought of that at the time.

The Committee carefully balanced the disputed evidence and decided that the Council had not discharged the evidential burden in respect of this allegation.

**This particular is NOT PROVED**

**Particular 9**

59. *Between February 2021 and February 2022, did not ensure that testing services provided by the Pharmacy were accredited with UKAS and / or make an application to UKAS.*

The Committee considered all the evidence and considered that the email sent by the Registrant to the Inspector on the 24 February 2024 which states “I did not realise that I needed to have UKAS accreditation for taking the swabs” was determinative. He did not take steps to check whether accreditation was necessary until after the inspection on the 22 February 2022. Additionally, the evidence provided by Ms 1 confirmed that there was no record of any application being made for UKAS accreditation by the Registrant.

## **This particular is PROVED**

### **Misconduct and Impairment**

60. Misconduct Having found some Particulars of the allegation proved, the Committee went on to consider whether the Particulars found proved amounted to misconduct and, if so, whether the Registrant's fitness to practise is currently impaired.
61. 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*" (Revised 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."*
62. The Committee took into account the submissions made by Mr Thomas, the Case Presenter and Mr Lakhani, the Registrant.
63. Mr Thomas submitted that the Registrant's particularised proved conduct falls far below the standards expected of him as a registered pharmacist. He submitted that the Registrant breached the following Council's Standards for Pharmacy Professionals (May 2017):

**Standard 1: provide person centred care.** In his providing a service that did not comply with the requirements for Covid-19 testing, at the time of a major public healthcare incident, the Registrant was failing to put patients first.

**Standard 5: use their professional judgement.** His decision to offer a Covid-19 testing service without following all the requirements, at a time when it was essential that members of the public and organisations had confidence in testing and certification, shows poor judgement.

**Standard 6: behave in a professional manner.** The Registrant was untruthful about important matters such as the conduct of testing services by Circular One Health and had lied to the Inspector about applying for UKAS accreditation.

**Standard 8: speak up when they have concerns or when things go wrong.** The Registrant emailed Ms 2 two days following her visit and dishonestly informed her that he had applied for UKAS accreditation. This demonstrates a failure to learn from his poor practice and to accept responsibility when things go wrong.

**Standard 9: demonstrate leadership.** The Registrant was in a position of leadership as the Responsible Pharmacist, Superintendent and owner of the Pharmacy at the material times. He failed to assess the risks in this case. He produced illegitimate fit to fly certificates which would be relied upon by patients and airlines.

64. Mr Thomas submitted that members of the public and fellow members of the profession would regard the Registrant's conduct to be seriously reprehensible and falls far below the required Standards and submitted that the facts that had been found proved, including dishonesty, constitute a serious departure from the Standards expected of a pharmacist. This conduct amounts to misconduct.
65. In respect of current impairment, Mr Thomas submitted that all four limbs of Rule 5(2) were engaged and that the Registrant's conduct posed a potential risk to patients and / or to the public. The robustness of Covid-testing and certification depended on the requirements being followed. By undermining this process, the Registrant potentially put patients at risk although there was no evidence of actual patient harm.
66. He further submitted that the Registrant has breached five out of nine professional Standards and that his misconduct breaches the fundamental principles of the profession which include placing patient health and safety at the heart of all actions taken. Additionally, and seriously, following the finding of dishonesty the Registrant's

misconduct in this case also shows that his integrity cannot be relied upon. Mr Thomas submitted that the Registrant's conduct undermined public confidence and the reputation of the profession and there needed to be a finding of impairment on public interest grounds. All these factors meant that the Registrant was currently impaired.

67. The Registrant did not accept that his actions amounted to misconduct and that his fitness to practise is currently impaired. He submitted that he had misjudged a trusted third party who he relied upon, namely Fit2Fly 24/7. He stated that he had delegated responsibility to them for record keeping and for certification, not through an attempt to deceive but through trust. He explained that this was a deep point of regret, and he had learned to verify third parties from this misjudgement.
68. He accepted that his record keeping was inadequate and that he should have maintained higher standards, but this was an oversight in unique and high-pressure circumstances of Covid -19 and it was not intentional but rather neglectful. He repeated the evidence given at facts stage that he had taken cash payments to ensure he could maintain stock delivery from suppliers while the business was going into administration.
69. He submitted that he had reflected on taking the swab ineffectively and returning it to the packet and submitted that it was an isolated lapse. In any event, no harm was caused as he had re-swabbed the patient, and latterly had checked the rules surrounding efficacy of testing and asserted that the test would still have been effective.
70. He submitted that he acted out of concern for public service allowing people to travel safely after periods of unprecedented lock down, rather than out of financial motivation. There had been no complaints about his patient centric delivery.

71. The Registrant submitted that the wording had been clumsy in the email sent to the Inspector and had been an error in phrasing, not in honesty.
72. While he recognised that his actions were flawed and he made errors in judgement, he had taken accountability for it and committed to working for the community. While he has been suspended from practice for two years, he has worked in community outreach providing food and hygiene to the homeless, demonstrating the best values of the profession.
73. He said that he believed that the certificates issued by Fit2Fly 24/7 were legitimate. Although he accepted that he should have examined the details on the face of the document; this was an oversight rooted in trust, not an attempt to deceive. He submitted that he had learned from this and was not going to repeat this conduct. He had actively reflected on the findings and that there was now no issue with his record keeping and he was undertaking a course in professional communication. He was dedicated to professional growth.
74. The Committee accepted the advice of the Legal Adviser.

#### **Decision on misconduct**

75. When considering whether the Particulars found proved amounted to misconduct the Committee took into account the *“Good decision making: Fitness to practice hearings and outcomes guidance 2024 “* (The Guidance)
76. 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 Standards:
  - a. Standard 1: provide person centred care
  - b. Standard 2: must work in partnership with others

- c. Standard 5: use their professional judgement.
  - d. Standard 6: must behave in a professional manner
  - e. Standard 9: must demonstrate leadership
77. 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).
78. The Committee considered each Particular that was proved and considered whether on its own it amounted to a serious falling short of the standard that would amount to misconduct. The Committee considered that Particular 1, the used swab returned to the packet rather than being tested, was a one-off lapse and did not amount to misconduct.
79. In respect of the failures in record keeping in Particulars 2.2 and 2.3, the Committee adjudged this to be a serious falling short of Standard 1 and Standard 2, in that pharmacy professionals must work in partnership with others in particular make and use records of the care provided. Patients would expect a pharmacist to keep accurate and contemporaneous records of testing, particularly during a health crisis.
80. The Committee considered that the misleading certificate and the dishonesty found proved in respect of using them (2.4, 3.3 and 3.4) was a serious falling short of Standard 6, which expects a pharmacist to be trustworthy and to act with honesty and integrity.
81. The Committee did not find that accepting cash and recording no sale (2.5 and 2.6) were a serious falling short of the Standards but could be regarded as poor business practice. The Committee was not able to draw an inference of financial motivation for this poor practice. The Committee also found that Particulars 4.1 and 4.2 did not amount to misconduct in and of itself.
82. The facts proved at Particular 6 and 7 in respect of a lie told to the GPhC Inspector about accreditation having been applied for was a serious falling short of Standard 6 and amounted to misconduct.

83. The Committee decided that the facts proved at Particular 9 were a serious falling short of Standard 1, as there was no audit trail should anything go wrong, Standard 5, expecting a pharmacist to have the information they need to provide appropriate care, and of Standard 2, to contact, involve and work with the relevant local and national organisations. The Committee determined that failing to understand, investigate and secure the correct accreditation for the service provided undermined the process of Covid testing to allow freedom to travel.
84. Accordingly, the Committee concluded that, in its judgement, the ground of Misconduct is established.
85. The Committee therefore did go on to consider whether the Registrant's fitness to practise is currently impaired.

### **Decision on Impairment**

86. Having found that some of the Particulars of allegation amounted to misconduct, the Committee went on to consider whether Mr Lakhani's fitness to practise is currently impaired. In doing so the Committee considered whether the Particulars found proved show that actions / omissions of the Registrant:
- *present 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.*
87. The Committee analysed the submissions and evidence provided on impairment:
- a.* The Committee considered whether the circumstances leading to the findings of misconduct are remediable. The Committee noted that dishonesty may be harder to remediate as the more serious the issue, the more difficult it may be to remediate in particular by upholding the wider public interest. Taking account of

all the circumstances of this case and the context the Committee considered that the misconduct was potentially remediable.

- b. The Committee noted that the Registrant has shown limited insight into the circumstances that led to the findings above, particularly in respect of dishonesty. He accepted that his actions were flawed but he was motivated by patient care with no basis of personal or financial gain. While his insight into record keeping failings was quite well developed, he maintained in his submissions that he had not been dishonest and was unable to take responsibility for or acknowledge what happened or understand the impact of that.
- c. The Committee noted that the Registrant had limited opportunity to remediate as a pharmacy professional as he had been suspended for two years and unable to practise as a pharmacist. The Committee took into account the testimonial provided by Mr Manvir Hothi, who was aware of the allegations and stated: *“I have never had any reason to doubt Sunil’s honesty. I have always found him hardworking and professional. His work with NishkamSWAT has not only helped countless individuals but has also brought credit to his profession”*. The Committee noted that the Registrant had provided some remediation in the circumstances by demonstrating regret and remorse in his reflective statement from paragraph 45 onwards but had not provided evidence of reflective practice, CPD or other training courses. However, the Committee noted during the Registrant’s submissions on impairment, he rode back to some extent from acceptance of his professional responsibility.
- d. The Committee was concerned that there is a risk of repetition. In particular, because the Registrant had not accepted the finding of fact in respect of dishonesty or demonstrated insight into why he had acted that way under pressure, which would eliminate the risk of repetition.
- e. The Committee determined that as there is a risk of repetition, such a repeat could cause potential harm to patients.
- f. The Committee went on to determine whether the wider public interest requires a finding of impairment to mark the seriousness of the misconduct 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. The Committee determined that this misconduct brought the profession as a whole into disrepute and that a finding of impairment was required to uphold proper standards of behaviour and to maintain public confidence in the profession.

88. The Committee therefore finds the Registrant's current fitness to practise to be impaired on public protection and public interest grounds and accordingly went on to consider the issue of sanction.

#### **Decision on Outcome**

89. Having found impairment, the Committee has gone on to consider the matter of outcome. The Committee's powers are set out in Article 54(2) of the Order. The Committee should consider the available outcomes in ascending order from least restrictive, take no action, to most restrictive, removal from the Register, in order to identify the appropriate and proportionate outcome that meets the circumstances of the case.
90. The purpose of the outcome is not to be punitive, though a outcome may in fact have a punitive effect. The purpose of the outcome 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.
91. The Committee had regard to the Council's '*Good decision making: Fitness to practise hearings and outcomes guidance*' to inform its decision to include the particular reference to the guidance on dishonesty.
92. The Committee took into account the submissions made by Mr Thomas, Case Presenter and Mr Lakhani, the Registrant.

93. The Committee accepted the advice of the Legal Adviser.
94. The Committee first considered what, if any, aggravating and mitigating factors there may be.
95. The Committee identified the following aggravating factors:
- a. The duration of misconduct in respect of the lack of UKAS accreditation which was over a period 12 months. The duration of using illegitimate certificates was 12 days.
  - b. Breach of trust to patients and the wider community. The Registrant was in a position of trust as a responsible Pharmacist, Superintendent Pharmacist and owner of the Pharmacy.
  - c. Previous GPhC investigation into the Registrant's failure to comply with regulatory requirements resulted in a warning on 23 September 2020. This warning was still in place at the time that the failure to seek appropriate accreditation was committed. The Committee noted that the warning was relevant and there were significant parallels with the misconduct in the instant case.
  - d. The fact that the warning imposed by the Investigation Committee noted that *"The Registrant has shown some contrition and remorse though he hasn't shown significant insight into his failure to comply with his regulatory duties. There is a clear public interest in ensuring that all the regulatory requirements of registered pharmacies are complied with to ensure the safety of the patients and public."*
  - e. While the Investigating Committee specifically removed reference to the honesty and integrity of the Registrant being compromised it did include in the warning a requirement that *"The registrant is warned that he must ensure that in future he ensures that any pharmacy he operates is compliant with any legal requirements. Furthermore, the registrant is warned that honesty*

*and integrity are an essential requirement for a pharmacy professional and he must ensure that in future his regulatory duties are complied with and completed in an accurate manner.”*

- f. A lack of due diligence in respect of verification of regulatory requirements when starting a new service or working with a third party.
- g. A failure to challenge third party poor practice.
- h. A failure to take responsibility for UKAS accreditation and providing accurate test results certification and instead relying on unverified third party suppliers and their accreditation and certificate template.

96. The Committee identified the following mitigating features:

- a. The context of the misconduct occurring during an unprecedented pandemic.
- b. The challenges presented by an ever-changing regulatory environment as scientific understanding of the virus developed.
- c. The lack of signposting to sources of information for pharmacists who were under pressure as they were required to fill the patient care gap that arose when it was difficult for patients to see GPs in person, and provide new pandemic related services.
- d. The Committee took into account the Registrant’s personal mitigation, including the extreme financial pressure he was under, his business problems and bereavement, which all took their toll on his health.
- e. The Committee noted that the Registrant had engaged with the regulatory process, he had shown regret and remorse and in his submissions on outcomes, had developed a plan to improve his future practice and to become a trustworthy pharmacy professional.

97. The Committee also considered that the salutary process of the hearing itself would reduce the risk of repetition. It noted that in his submissions on outcome, the Registrant now accepted full responsibility for his actions and the impact on public confidence and that he was taking constructive steps to change his behaviour. He

said that he will continually reflect to ensure future decisions meet moral scrutiny. The Committee viewed this as the Registrant developing further insight.

98. To take no action. The Committee considered that this was insufficient to meet the findings of dishonesty.
99. Warning. The Committee considered that this was insufficient to meet the findings of dishonesty.
100. Conditions of Registration. The Committee next considered the imposition of Conditions of Registration. A Conditions of Registration Order would not be appropriate in a non-clinical case like this, nor would it be sufficient to mark the seriousness of the matter so as to maintain public confidence in the Registrant, the profession and the Regulator, and sufficient to promote professional standards within the profession.
101. Suspension Order. The Committee next considered whether suspension would be a proportionate outcome. The Committee noted the Council's guidance which indicates 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 unbefitting a member of the pharmacy profession. Also, when public confidence in the profession demands no lesser outcome."*

102. The Committee took into account the circumstances of the proven allegations and assessed where the dishonesty found proved fell on a scale of dishonesty. While the dishonesty was serious it was not the most serious, no evidence had been provided by the Council that it was motivated by financial gain. The Committee accepted the submissions made by Mr Thomas that this was not a Regulator for whom a finding of dishonesty must inevitably mean removal from the register. The Committee considered the criteria set out in paragraph 6.9 of the GPhC Guidance and

determined that the dishonesty found was not as serious as that referred to in the non-exhaustive list. The Committee determined that this dishonesty was potentially remediable. The Committee considered the period of suspension that the Registrant had been under for a period of two and a half years. The Committee was persuaded by the Registrant's submission in respect of how he intended to work as a locum in the future and not as a Superintendent Pharmacist or Pharmacy owner and his concrete commitment to rebuild trust. The Registrant had demonstrated his commitment to public service through his voluntary work in the community during the period of his suspension. This was evidenced by the testimonial produced.

103. The Committee determined that a period of suspension for 12 months was appropriate and proportionate taking into account the aggravating factors and the serious nature of the findings. This period would adequately protect the public and the wider public interest.
104. Removal. The Committee considered removal and decided that it was not appropriate and was disproportionate as it was reserved for the most serious conduct which is fundamentally incompatible with being a registered pharmacy professional.
105. The Committee therefore directs that the Registrar suspends the Registrant, Mr Sunil Kumar Lakhani for a period of 12 months.

### **Review Hearing**

106. This decision will be reviewed by a future Committee before the outcome expires. That Committee may be assisted by the following material which should be submitted by the Registrant to the Council no less than seven days before the Review Hearing:
  - A written reflection on the findings of this Committee
  - Recent testimonials relevant to integrity and communication from paid or unpaid work. Any referees need to be aware and make reference to the findings of this Committee.

- Evidence of relevant training.
- Evidence and a written reflection of any professional discussions concerning ethics and integrity.

### **Interim Order**

107. The interim order is revoked.

### **Decision on Interim Measures**

108. The Committee's substantive decision will not take effect until 28 days after notice of this decision has been sent, or until any appeal has been finally disposed of.
109. The Committee heard submissions from Mr Thomas, the Case Presenter to the effect that interim measures are necessary on the first two grounds set out in Article 60 of the Order. As the Committee had determined that there remained a risk of repetition and because of this, a potential risk of harm to the public, interim measures were necessary to protect the public. He submitted that the second ground was also engaged because of the determination on dishonesty, and that interim measures were also necessary in the public interest.
110. The Registrant submitted that the overall impact of the outcome determined, given the two and a half years he had been suspended pending this hearing. It had taken 33 months for this to come to a final hearing. This meant that he will have spent 45 months suspended from practice and that this was disproportionate.
111. The Committee followed legal advice received on the test in Article 60.
112. The Committee took account of section 3 of the Council's Guidance of March 2024. The Committee determined that interim measures were necessary both to protect the public and were otherwise necessary in the public interest. The decision for the first ground was that the Committee had already found that the Registrant's insight was incomplete and while this was the case, there remained a risk of repetition.

This meant that there was a potential risk to the public. The Committee considered that interim measures were necessary on the second ground, in the public interest given the effect a finding of dishonesty has on public confidence in the profession.

113. An interim measure in the form of suspension from the Register will have immediate effect.
114. This concludes the determination.