

General Pharmaceutical Council

Fitness to Practise Committee

Principal Hearing

Remote Videolink

9-12 December 2024

Registrant name:	Sylvester Emmanuel Vinkabb Jr
Registration number:	2211346
Part of the register:	Pharmacist
Type of Case:	Misconduct
Committee Members:	Manuela Grayson (Chair) Jignesh Patel (Registrant member) Paul Barton (Lay member)
Committee Secretary:	Sameen Ahmed and Gemma Staplehurst
Registrant:	Present and represented by Mr Kevin McCartney of Counsel
General Pharmaceutical Council: Presenter	Represented by Ms Eleanor Gwilym, Case
Facts proved:	Particulars 1, 2, 3, 4, 5, 6, 6.2, 7, 7.1 and 7.2
Facts proved by Admission:	Particulars 6.1a), b) and c)
Fitness to practise:	Impaired
Outcome:	Suspension, 12 months

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 10 January 2025 or, if an appeal is lodged, once that appeal has been concluded.

Particulars of Allegation

“You, a registered Pharmacist, whilst employed at Evans Pharmacy, Long Eaton, Derbyshire (“the Pharmacy”):

1. Between May 2022 and February 2023, ordered and removed approximately 211 x boxes of 60 tablets x 0.5mg of Xanax from the Pharmacy;

2. Between May 2022 and February 2023, ordered and removed approximately 123 x boxes of 28 tablets x 10mg of Diazepam from the Pharmacy;

3. Between September 2022 and February 2023, ordered and removed approximately 9 x 2 litre bottles of Codeine Linctus from the Pharmacy;

4. Between May 2022 and March 2023, ordered and removed approximately 472 x 200ml bottles of Codeine Linctus from the Pharmacy;

5. Between February 2022 and February 2023, ordered and removed approximately 357 x 100 ml bottles of Phenergan Elixir from the Pharmacy;

6. In respect of allegations 1 to 5 above, having removed these high-risk medicines liable to abuse, misuse or overuse from the Pharmacy, supplied them onwards:

6.1 without the authority of:

(a) a wholesale distribution licence; [ADMITTED]

(b) a Home Office controlled drugs licence (including in respect of export); [ADMITTED]

(c) a UK legally valid prescription; [ADMITTED]

6.2 without any or any adequate guarantee that consumption by end users would be subject to effective clinical oversight; [NOT ADMITTED]

7. In respect of allegations 1 to 5 above, were dishonest, in that:

7.1 you knew that you did not have the permission of your employer to order and / or remove medicines other than for the purposes of the Pharmacy’s business;

7.2 you knew that you did not have a UK valid prescription in respect of the prescription-only medication; [DISHONESTY DENIED]

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

Documentation

Document 1- GPhC hearing bundle of 110 pages

Document 2- Combined Statement of Case and Skeleton Argument on behalf of the Council, 14 pages, dated 29 November 2024

Document 3- Registrant’s hearing bundle which included: Registrant’s witness statement dated 21 November 2024, Amazon orders, and positive testimonials, of 27 pages

Document 4 - Testimonial of SK, Ass. Superintendent of Police, Allen town, Freetown, Sierra Leone, dated 5 October 2024

Document 5- Testimonial of Dr MS, Allen Town, Freetown, Sierra Leone, 3 October 2024.

Witnesses

On behalf of the Council:

Mr 1, Director at Daleacre Healthcare Ltd and Superintendent Pharmacist, Evans Pharmacy

Mr 2, Director at Daleacre Healthcare Ltd and the Registrant’s line manager at Evans Pharmacy.

The Registrant also gave oral evidence.

Determination

Introduction

1. This is the written determination of the Fitness to Practise Committee at the General Pharmaceutical Council (‘the Council’).
2. The hearing is governed by *The Pharmacy Order 2010* (“the Order”) and *The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010* (“the Rules”).
3. The statutory overarching objectives for these regulatory proceedings are:

- a. To protect, promote and maintain the health, safety and well-being of the public;
 - b. To promote and maintain public confidence in the professions regulated by the Council; and
 - c. To promote and maintain proper professional standards and conduct for members of those professions.
4. The Committee also has regard to the guidance contained in the Council's *Good decision- making: Fitness to practise hearings and 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 30 October 2024 from the Council headed 'Notice of Hearing' addressed to the Registrant. The Committee was satisfied that there had been good service of the Notice in accordance with Rules 3 and 17.

Registrant's Response to Particulars of Allegation

7. Mr McCartney, on behalf of the Registrant, informed the Committee that whilst it was not disputed by the Registrant the medication as described in particulars 1-5 was ordered and removed from the Pharmacy, the Registrant was not in a position to make

formal admissions as he did not keep a record of the quantities involved. He accepted the quantities set out by the Council in the particulars.

8. In relation to particular 6, Mr McCartney stated that the Registrant admitted 6.1 a) b) and c), however 6.2 was not admitted.
9. In relation to particular 7, Mr McCartney said that dishonesty was denied in that the Registrant accepted that he knew he did not have the permission of his employer to order and / or remove medicines other than for the purposes of the Pharmacy's business; and that he did not have a UK valid prescription in respect of the prescription-only medication. The issue was as to the difference between conduct which was wrongful and conduct which was dishonest.
10. In the light of the above, and by the application of Rule 31(6) of the Rules, the Chair announced that the admitted factual particulars, 6.1 a), b) and c), were found proved.
11. The Committee took into account that the Registrant's admissions in relation to the facts alleged at particulars 6.1 a), b) and c) were supported by the oral evidence of the Council's witnesses, Mr 1 and Mr 2 and also by the records of the Registrant's investigatory and disciplinary interviews with his employer.
12. The Committee then turned to consider the remaining factual particulars.

Background

13. The Council set out the background to the allegations in its skeleton argument, and it is summarised below.
14. The Registrant was the Pharmacist in charge of the College Street, Long Eaton branch of Evans Pharmacy. The Responsible Pharmacist log shows that he was the regular Pharmacist in the branch, although there were also periods when he was absent. In

March 2023, Mr 1 raised a concern with the Council about the Registrant ordering and removing high-risk medications from the branch. A review of branch performance had highlighted a “lack of purchase margin” at the branch. Mr McDonald was tasked with making enquiries. A review of invoices from the supplier revealed significant purchases of Xanax per month since May 2022, but these reduced on occasions when the Registrant was not in the branch. The quantities could not be accounted for by private prescriptions or any other distribution method (Xanax is not prescribable under the NHS). The Registrant was suspended.

15. Discrepancies were also noted in relation to Diazepam, which had been purchased with no prescriptions dispensed, and later in relation to Codeine Linctus and Phenergan, which were purchased in large quantities and not all sales could be validated against prescriptions or the electronic point of sale till. Mr McDonald provided the Committee with a spreadsheet of his findings.
16. The Registrant co-operated with an initial investigation interview by the Pharmacy, a formal investigation meeting, and a Disciplinary Meeting. The Registrant said that the drugs were sent regularly to Africa for charitable causes and had been paid for.
17. In March 2024, the Pharmacy further provided the Council with sales data from the College Street branch for Codeine Linctus and Phenergan Elixir between February 2022 and March 2023. It is from these figures that estimates of the volumes of the drugs ordered but not sold have been set out in the particulars of allegation.

DETERMINATION ON THE FACTS

18. In reaching its decisions on facts, the Committee considered the documentation listed at the start of this determination, oral evidence and the submissions made by Ms Gwilym on behalf of the Council and by Mr McCartney on behalf of the Registrant.
19. 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.
20. The Committee appropriately applied the principle in relation to the Registrant's previous good character, as submitted by Mr McCartney: namely that previous good character is supportive of the Registrant's credibility and also, particularly in relation to the allegation of dishonesty, lack of propensity, to act as alleged.
21. The Committee bore in mind that the Registrant had not sought to deny that he had ordered and removed the medications alleged at particulars 1-5 from the Pharmacy as alleged. (He was however unable to say how much medication he took because he had no records). Nor did he deny that, (with hindsight), what he did was wrong. He had indeed made formal admissions to taking the medicines, which were high-risk and liable to abuse, misuse or overuse, without the necessary licences and without valid UK prescriptions.
22. It was submitted on his behalf that in ordering and removing the medications as alleged at particulars 1-5, the Registrant was not however, dishonest, applying the appropriate legal test for dishonesty.
23. The Registrant had maintained throughout the investigations of his employer and of his professional regulator, and before the Committee at this hearing, that due to his personal and first- hand knowledge of the "suffering" of people in Sierra Leone, he had

been shipping these and other medical supplies to his mother in Sierra Leone, for collection by a doctor, so that the doctor could use the controlled drugs and other supplies to benefit patients.

24. The Committee has set out below some parts of the Registrant's witness statement, in which he summarised what he was doing and why:

"It was always upsetting to me when I went back to Sierra Leone and saw how difficult it was for the community hospital, the staff and the patients with such acute shortages of medicines that are commonly available, and regularly thrown away, in the UK.

I cannot remember exactly when, but probably in around 2022, I started to take some medicines out of the patient returns bin in the Pharmacy to send back to Sierra Leone. This was not in any significant quantities. For example, if old paracetamol or ibuprofen came back in their original packs and were unused and untouched, I would take them out of the patient returns bin, remove the labels and put them in a separate box, which was known as the "Africa box" in the branch. The "Africa box" did not just include medicines, but also other medical products such as dressings. This was opportunistic rather than targeted, so if something came in that I thought would be helpful back in the local community in Sierra Leone then I would put it to one side.

I would buy barrels from a local shipping company in Leicester that I would pack the products that I had collected to send back to Sierra Leone. As stated above, this might include old clothes and shoes, products that I had bought from Aldi or Lidl to send back (eg toothpaste and other basic sanitary products), any old dressings or the medicines that were in the "Africa box" in the pharmacy.

In terms of shipping the barrels back to Sierra Leone, the way this worked was that there were shipping agencies who would arrange for loads to be sent to Sierra Leone by ship. The shipping agencies would regularly send out whatsapp messages saying that they were picking up from certain locations on a certain date for a shipping which was due to leave the UK on a certain date and to arrive in Sierra Leone around 4 weeks later. The message would give a number to arrange collection. The collections typically cost £60 or £70 which I would pay.

The barrels were shipped to my mother's home where they would be sorted by other family members and distributed as appropriate. My mother is a reverend and so is a community leader in the local parish, which also has a school, a community hospital, etc. The packages that I sent back would therefore be distributed in the immediate parish area to individuals, the school, the hospital, the church, etc.

I would like to make it clear that I would never, and have never, reused patient-returned medicines for supply back to UK patients. However, as I have stated above, patients were going without any medicines at all in Sierra Leone whilst those medicines were being thrown away in the UK and I thought I could help in some way with that – I therefore felt that sending these medicines back at least allowed patients some access to medicines that they would otherwise not have at all.

The lead doctor at the community hospital would routinely ask me to obtain equipment for them that they could not get. For example, he asked me to get a stethoscope, otoscope, blood pressure monitoring equipment, etc. Whenever he asked for equipment or other items I would always reply to say that if I could get it I would. I would then try to source whatever he had asked me to get (often the items were easily available in the UK online, for example through Amazon) and I would send it back if I could. For example, I remember on one occasion he asked me to buy 1,000 pregnancy tests, which I bought online and sent back. I exhibit to this statement marked "SV1" examples of Amazon orders for items which I purchased to send to Sierra Leone. These are in the name of my ex-partner as she had the Amazon account that was used to place the orders.

When the doctor in Sierra Leone realised that I was sending back some medicines (from the "Africa box"), he started to ask if I could obtain specific medicines. In Sierra Leone, almost all medicines can be purchased from the pharmacy without a prescription, so the regulations there are very different from in the UK. The doctor in Sierra Leone would ask me if I could get certain medicines for him to supply to his patients through his clinic. I wanted to help if I could, because I knew how difficult the healthcare situation was in the country and the shortages of particular medicines. I therefore agreed to help if I could.

The doctor would send me messages on whatsapp, asking if I could source certain medicines. He would send me a list of medicines that were needed and I would send what I could. I would order the medicines from the usual wholesalers for Evans Pharmacy and

would put the cost price plus VAT in the till so that the pharmacy was not out of pocket. I would record it as either “miscellaneous” or “private prescription”. This meant that the Pharmacy did not lose any money. I did not receive any money from the doctor in Sierra Leone or anyone else for the medicines, so I did this out of my own pocket.

When the stock came in, I would package it up and send it to Sierra Leone in batches as described above. I would say that the majority of medicines that I supplied were blood pressure or diabetes medicines, so medicines to treat chronic diseases that were very cheap. The medicines that I sent included metformin, paracetamol, ibuprofen, Bendroflumethiazide, Furosemide, amoxicillin, flucloxacillin. The medicines did include those the ones referred to in the Council’s bundle (codeine, Phenergan and diazepam), but these represented only a small proportion of the items that were supplied.

I used to write down what I bought and what I needed to pay for in the daily diary which was kept in the Pharmacy next to the computer. I no longer have access to the daily diary because it remained in the Pharmacy after I was dismissed.

When the stock came in, I used to put it to one side and would then take it out of the Pharmacy. I never ordered large quantities because I could only order what I could afford to pay for myself.

I do not believe that anyone in the Pharmacy or the wider business knew that I was ordering stock to send to Sierra Leone. Whilst I was open about the other collections and the “Africa box”, I did not tell anyone about the orders that I was making from the wholesalers...”

25. The Committee considered each of the particulars of allegation in turn.

Particular 1:

You, a registered Pharmacist, whilst employed at Evans Pharmacy, Long Eaton, Derbyshire (“the Pharmacy”):

1. Between May 2022 and February 2023, ordered and removed approximately 211 x boxes of 60 tablets x 0.5mg of Xanax from the Pharmacy

26. The Committee took into account the documentary evidence contained within the Council’s bundle, including spreadsheets provided by the Pharmacy which recorded the quantities of Xanax which the Pharmacy had identified as having been ordered and delivered to the Pharmacy. The Committee took into account that the quantities alleged were “approximate”, and that the Registrant did not dispute that he had ordered and removed quantities of Xanax from the Pharmacy as alleged, however he did not keep records and so could not confirm or deny the approximate quantities alleged. The Committee also took into account the minutes of the first investigatory interview in the bundle, (2 March 2023) in which the Registrant admitted, in relation to Xanax, that he had been “sending it to Africa”. He told Mr McDonald during that interview, that he would buy it “at cost price” and the “meds” were then “hidden in a barrel with clothes and shoes”.

27. In his second interview (7 March 2023), when questioned in relation to “excess purchases of Schedule 3 Benzodiazepines (May 2022-February 2023)” – Diazepam and Xanax, the notes of the interview record that the Registrant said:

“I’m not giving them in the UK, only sending back home. I don’t know quantity, all purchased to send back home. I also send a lot of OTC, dressings, and vitamins, not just these drugs. ...I speak with a doctor back home and he tells me what drugs are needed, they can’t get pain meds or treat anxiety, the drugs aren’t available”.

28. The Committee also had regard to the letter dated 3 October 2023 from Dr MS of Sama's Clinical & Medical Services, in Freetown, Sierra Leone. It was accepted by both parties – and by the Committee, that this was hearsay evidence and could not therefore be tested, however the Committee considered it fair to place weight on Dr MS's confirmation that the Registrant had provided:

“ wide range of medical equipments, medical dressings, medications like [...]Xanax...”.

29. The Committee considered that Dr MS's letter, though merely hearsay, appeared to corroborate the Registrant's explanation for his ordering and removal of the Xanax; however it was aware that the final destination of the Xanax which he allegedly ordered and removed did not form part of the allegation.

30. Taking all of the evidence into account, the Committee found this particular PROVED.

Particular 2

2. Between May 2022 and February 2023, ordered and removed approximately 123 x boxes of 28 tablets x 10mg of Diazepam from the Pharmacy;

31. The Committee took into account the documentary evidence contained within the Council's bundle, including spreadsheets provided by the Pharmacy which recorded the quantities of Diazepam which the Pharmacy had identified as having been ordered and about which could not be tallied with dispensing records. The spreadsheets supported the approximate quantity of Diazepam medication set out in particular 2.

32. The Committee also took into account the record of the Registrant's second interview (7 March 2023), when he was questioned in relation to "excess purchases of Schedule 3 Benzodiazepines (May 2022-February 2023)" – Diazepam and Xanax, which sets out that the Registrant said:

"I'm not giving them in the UK, only sending back home. I don't know quantity, all purchased to send back home. I also send a lot of OTC, dressings, and vitamins, not just these drugs. ...I speak with a doctor back home and he tells me what drugs are needed, they can't get pain meds or treat anxiety, the drugs aren't available".

33. The Committee also took into account the Registrant's witness statement of 21 November 2023 in which he stated:

"The medicines did include those the ones referred to in the Council's bundle (codeine, Phenergan and diazepam), but these represented only a small proportion of the items that were supplied".

34. The Committee also had regard to the letter dated 3 October 2023 from Dr MS of Sama's Clinical & Medical Services, in Freetown, Sierra Leone. It was accepted by both parties that this was hearsay evidence and could not therefore be tested, however the Committee considered it fair to place weight on Dr SM's confirmation that the Registrant had provided what Dr SM called "Diagepan".

35. The Committee considered that Dr SM's letter, though merely hearsay, appeared to corroborate the Registrant's explanation for his ordering and removal of the Diazepam; however it was aware that the final destination of the Diazepam ("Diagepan") which he allegedly ordered and removed did not form part of the allegation.

36. Taking all of the evidence into account, the Committee found this particular PROVED.

Particular 3

3. Between September 2022 and February 2023, ordered and removed approximately 9 x 2 litre bottles of Codeine Linctus from the Pharmacy;

37. The Committee took into account the documentary evidence contained within the Council's bundle, including spreadsheets provided by the Pharmacy which recorded the quantities of codeine linctus 2litre bottles which the Pharmacy had identified as having been ordered and which could not be tallied with customer purchases. The spreadsheets supported the approximate quantity of medication set out in particular 3.

38. The Committee took into account the Registrant's response as set out in the minutes of his second investigatory interview, when Mr McDonald asked him: "why the following drugs, known to be subject to abuse, were ordered" – listing quantities of Codeine Linctus 2L, (and Codeine Linctus 200ml and Phenergan Elix 200 ml). The Registrant said:

"[I] usually send it back to Sierra Leone, all go to my home, none are sold here. They all go in the barrel. I pay for it and send it. I am blinded by wanting to help people".

39. The Committee also took into account the Registrant's witness statement of 21 November 2023 in which he stated:

"The medicines did include those the ones referred to in the Council's bundle (codeine, Phenergan and diazepam), but these represented only a small proportion of the items that were supplied".

40. The Committee noted that Dr SM's letter, though hearsay, appeared to support the motive put forward by the Registrant for ordering and removal of the Codeine linctus as alleged by the Council at particular 3; however it was aware that the final destination of the codeine linctus which he allegedly ordered and removed did not form part of the allegation.
41. Taking all of the evidence into account, the Committee found this particular PROVED.

Particular 4

4. Between May 2022 and March 2023, ordered and removed approximately 472 x 200ml bottles of Codeine Linctus from the Pharmacy;

42. The Committee took into account the documentary evidence contained within the Council's bundle, including spreadsheets provided by the Pharmacy which recorded the quantities of codeine linctus 200ml bottles which the Pharmacy had identified as having been ordered and which could not be accounted for as having been sold. The spreadsheets supported the approximate quantity of medication set out in particular 4.
43. The Committee took into account that when asked by Mr 2 about apparent orders of 50 bottles of codeine linctus on 3 March 2023, the Registrant was recorded as replying: "I paid for them through private scrip", and later the record sets out that he said: "paid for it through the till as private script 2 days ago".
44. The Committee also took into account the Registrant's response as set out in the minutes of his second investigatory interview, when Mr 2 asked him: "why the following drugs, known to be subject to abuse, were ordered" – listing, among other medications, quantities of Codeine Linctus 200ml. The Registrant said:

"[I] usually send it back to Sierra Leone, all go to my home, none are sold here. They all go in the barrel. I pay for it and send it. I am blinded by wanting to help people".

45. The Committee also took into account the Registrant’s witness statement of 21 November 2023 in which he stated:

“The medicines did include those the ones referred to in the Council’s bundle (codeine, Phenergan and diazepam), but these represented only a small proportion of the items that were supplied”.

46. The Committee noted that the alleged destination for the medication was corroborated in Dr SM’s letter in which he said that the Registrant had provided “codeine linctus”; however it was aware that the final destination of the medication did not form part of the allegation.

47. Taking all of the evidence into account, the Committee found this particular PROVED.

Particular 5

5. Between February 2022 and February 2023, ordered and removed approximately 357 x 100 ml bottles of Phenergan Elixir from the Pharmacy;

48. The Committee took into account the Registrant’s response as set out in the minutes of his second investigatory interview, when Mr 2 asked him: “why the following drugs, known to be subject to abuse, were ordered” – listing quantities of medications including Phenergan Elix 200 ml. The Registrant said:

“[I] usually send it back to Sierra Leone, all go to my home, none are sold here. They all go in the barrel. I pay for it and send it. I am blinded by wanting to help people”.

49. The Committee also took into account the Registrant’s witness statement of 21 November 2023 in which he stated:

“The medicines did include those the ones referred to in the Council’s bundle (codeine, Phenergan and diazepam), but these represented only a small proportion

of the items that were supplied”.

50. The Committee noted that the alleged destination for the medication was corroborated in Dr MS’s letter in which he said that the Registrant had provided “Phenergan”; however it was aware that the final destination of the medication did not form part of the allegation.
51. Taking all of the evidence into account, the Committee found this particular PROVED.

Particular 6

6. In respect of allegations 1 to 5 above, having removed these high-risk medicines liable to abuse, misuse or overuse from the Pharmacy, supplied them onwards:

6.1 without the authority of:

(a) a wholesale distribution licence;

(b) a Home Office controlled drugs licence (including in respect of export);

(c) a UK legally valid prescription;

6.2 without any or any adequate guarantee that consumption by end users would be subject to effective clinical oversight;

52. The Registrant had admitted particulars 6.1a), b), and c) at the start of the hearing and the Committee had therefore found those particulars proved. The Committee took into account the evidence of Mr McDonald who confirmed that the Registrant was ordering and removing the medications from the Pharmacy without permission to do so; and the evidence of both Mr 1 & Mr 2, directors of the Pharmacy, to the effect that they were unaware that he was doing so until alerted to the concerns which led to this referral.

53. In relation to particular 6.2, the Committee considered the submissions on behalf of the Council and the Registrant. Ms Gwilym submitted that what was described by the Registrant was a system based on trust, in which he trusted the doctor in Sierra Leone, Dr MS, to appropriately treat patients with effective clinical oversight. However, there was no evidence of Dr Ms's qualifications, of his experience or the nature of his practice. She submitted that the standards for effective clinical oversight should be those in the UK as these were UK controlled drugs and the Registrant, who was supplying the medication, was regulated as a professional in the UK.

54. Mr McCartney, for the Registrant, reminded the Committee that the burden was on the Council to prove the facts alleged at particular 6.2, and submitted that it had not done so. The evidence from Dr Ms, though hearsay, was corroborated by the letters from the Reverend and the police officer in Sierra Leone, to the effect that the medication was being used to treat patients in their community in Sierra Leone.

55. The Committee carefully considered the evidence before it. The Registrant had said in his witness statement that the medications were received in Sierra Leone by his mother and then sorted through by her and other relatives, distributed to those in need and also to the doctor. There was no record however of where any specific medications went, no record of the clinical needs or identities of patients. Dr MS, though he stated: "I make sure they go to the rightful person accordingly", also admitted that:

"I never go into recording of these items we the community stakeholders make sure we receive them and administer them freely without any cost". Furthermore, he wrote that he was *"for the past months...not in Freetown, Allen Town, but [he was] monitoring how things are going there medically even with my own supports from here in the provinces"*.

56. The Committee took full account of the distressing circumstances in relation to healthcare for so many people living in Sierra Leone, which the Registrant had described during the hearing and in his witness statement. This includes the severe lack

of availability of medications, the fact that such medication as appears to be available is often counterfeit and therefore does not work, and the fact that prescriptions for controlled drugs are not required in Sierra Leone. It would no doubt have been difficult for the Registrant to guarantee for himself that the medications were being distributed and used with effective clinical oversight according to UK standards. The Committee accepted the submissions of Ms Gwilym to the effect that his relationship with Dr MS, and indeed with those to whom the medication was, he stated, being sent, was based on trust.

57. Taking all the information before it into account, the Committee was satisfied the Registrant, having removed the high-risk medicines liable to abuse, misuse or overuse from the Pharmacy, as it had found proved in relation to particulars 1-5 above, was in fact supplying them onwards without any or any adequate guarantee that consumption by end users would be subject to effective clinical oversight.

58. The Committee therefore found particular 6 PROVED.

Particular 7

7. In respect of allegations 1 to 5 above, were dishonest, in that:

7.1 you knew that you did not have the permission of your employer to order and / or remove medicines other than for the purposes of the Pharmacy's business;

7.2 you knew that you did not have a UK valid prescription in respect of the prescription-only medication.

60. 59. The Committee carefully considered this particular in light of the fact that the Registrant had denied that his conduct was dishonest. It took into account the submissions on behalf of the Council and the Registrant.

61. Ms Gwilym for the Council had submitted in summary that applying the principles in the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67, particularly the objective test, where the Registrant had admitted the facts alleged at 7.1 and 7.2, he would be considered dishonest by the (objective) standards of ordinary decent people.
62. She reminded the Committee that Mr McDonald had stated in oral evidence that he had had a conversation, albeit informally, with the Registrant in which Mr McDonald had refused to get involved in sending medication to Sierra Leone because licences were needed for this type of activity. Ms Gwilym submitted that the Registrant nevertheless went ahead with obtaining and sending the medication abroad, and he did so secretly, knowing he ought not to be doing it.
63. Mr McCartney reminded the Committee that the Ivey principles consisted of a 2-stage test: it was important to ascertain the Registrant's actual state of mind at the time of the alleged conduct before turning to decide whether according to the (objective) standards of ordinary decent people, that state of mind, amounted to dishonesty.
64. The Committee had regard to the principles set out in the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67, in which it was said that:

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

65. It carefully considered all the evidence before it in relation to the Registrant's conduct to ascertain the Registrant's actual state of mind when (as found proven by the Committee) – he ordered and removed the medications as alleged.
66. It accepted for the purposes of this test that the Registrant was, as he had consistently maintained, sending the medication abroad to Sierra Leone, in the hope, and trust, that it would be used to treat patients according to their clinical needs. It took into account the submissions of Mr McCartney that the Registrant knew that what he was doing was wrong.
67. The Registrant had described both during his employer's investigatory interviews and in his witness statement how he would make small orders, when he could afford it, and send the medications abroad in barrels. In his first investigatory interview he said the medications would be "hidden in a barrel with clothes and shoes". When asked by Mr McDonald whether anyone else knew what he was doing in relation to the medications alleged, he replied: "No I put it in a basket, bit by bit", and at his second interview he said: *"No staff is aware, 100%. Nobody sees or knows what I do. When they unpack the orders I tell them to put it in the owing shelf in the back."*
68. When asked how he removed the stock and made payments "without anyone in the branch seeing it", he responded:
- "I do it in small quantities, in the morning or at night. I take it out in a normal script bag and just take it when I leave". (He added: "I take a lot of dressings to send back home to help the hospitals but never order them in").*
69. In oral evidence to the Committee, the Registrant said that it was not always morning and evening, it would be done when he was not busy.
70. The Committee took into account the oral evidence from Mr McDonald in relation to this particular. He told the Committee that he knew the Registrant had been involved in

setting up a hospital and would go regularly to Sierra Leone during holidays once or more a year and would take part in charitable and community work when he was there. He recalled an informal conversation with the Registrant in which he refused to assist the Registrant in sending medication to Sierra Leone. In re-examination by Mr McCartney, he said that although he could not recall exactly what was said, it was something to the effect that there would be too much paperwork involved, or too many hoops to jump.

71. The Committee was satisfied that the Registrant was plainly aware that he was ordering and removing the medication without permission from his employers or the authority of a prescription (he has admitted as much). Although his colleagues were aware that he had an "Africa Box" in the Pharmacy where he collected unwanted objects including clothes and shoes, and some medical materials such as dressings and indeed some medications including paracetamol, he took care to hide from them the fact that he was ordering and removing controlled medication. He knew not only that he had no permission from his employers, but that his line manager had explicitly refused to give permission. Furthermore, the Registrant was ordering medicines that he knew were not required by the Pharmacy, and whilst himself paying for items, he was processing the items on the till, as private prescriptions or miscellaneous items. His conduct was, in the Committee's view, designed to avoid detection.

72. Applying the 2- stage lvey test, the Committee was of the view that the Registrant knew at the time of his conduct that he needed to hide it from colleagues and his employers. He also knew that there was no licensing in place to authorise his conduct.

73. In relation to stage 2 of the test, the Committee was satisfied that, however admirable and well-intentioned the Registrant's conduct might have been, applying the (objective) standards of ordinary decent people, it was, nevertheless, dishonest.

74. Taking all of the evidence into account, the Committee found this particular PROVED.

THE IMPAIRMENT STAGE

75. Having found the facts proved, the Committee went on to consider whether those facts amount to misconduct and, if so, whether the Registrant's fitness to practise is currently impaired by reason of his misconduct.

76. The Registrant gave evidence at this stage, in which he told the Committee that he had let a lot of people down, not only himself but those at the Pharmacy who trusted him, the Council, and the general public in terms of patient safety and mistrust of his profession. He told the Committee he understands that rules and regulations are in place for a reason, namely patient safety and confidence in the profession. He said he had been transparent with his current employer and colleagues about this regulatory process and the allegations he had faced. He had indeed told a junior pre-reg colleague whom he works with, who is from a similar background, about his own situation and warned the colleague that regardless of a wish to help others, the rules and regulations of the profession are there for patient safety, and must be followed.

77. Article 54(1) of the Pharmacy Order 2010 provides:

"The Fitness to Practise Committee must determine whether or not the fitness to practise of the person in respect of whom the allegation is made (referred to in this article as "the person concerned") is impaired".

78. Paragraph 2.12 of the Council's Good decision making: Hearings and Outcomes Guidance (March 2024), states:

"A pharmacy professional is 'fit to practise' when they have the skills, knowledge, character, behaviour and health needed to work as a pharmacist or pharmacy technician safely and effectively. In practical terms, this means maintaining appropriate standards of competence, demonstrating good character, and also keeping to the principles of good practice set out in our various standards, guidance and advice".

79. Misconduct is a “gateway” which may lead to a finding of current impairment. Article 51(1) of the Pharmacy Order 2010 provides that:

“A person’s fitness to practise is to be regarded as “impaired” for the purposes of this Order only by reason of:

(a) misconduct

[...]

80. Case law has set out that misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard may often be found by reference to the rules and standards ordinarily required to be followed in the particular circumstances. “Misconduct” should not be viewed as anything less than “serious professional misconduct”; and it has been referred to as conduct which would be regarded as deplorable by fellow practitioners. It may entail conduct that, to some degree, is morally blameworthy.

Submissions on Misconduct and Impairment

81. Ms Gwilym, on behalf of the Council, submitted that the Registrant’s proven conduct breached Standards 1, 2, 5 and 6 of the Council’s Standards for Pharmacy Professionals (May 2017), and that a finding of misconduct should be made.

82. She submitted, in summary, that the Registrant’s conduct was designed to avoid detection; he knew it was without his employer’s permission and without the requisite licences and valid prescriptions. He had betrayed the trust of colleagues and his employers with whom he should have been working in partnership.

83. In relation to current impairment, Ms Gwilym submitted that although it was right to say that most of the factual particulars had been proved by the Registrant’s admissions, this was a pattern of behaviour amounting to tricking and deceiving people who ought to have

been able to trust him. She cautioned against a finding that the misconduct has all been addressed: the Registrant behaved dishonestly for many months and in relation to high risk medications which have the capacity for addiction and misuse. He abused the high position of trust placed in him as a pharmacist.

84. Ms Gwilym submitted that the Council's position was that a finding of impairment should be made both because of a risk to the public and also in the public interest.

85. Mr McCartney, on behalf of the Registrant, accepted that the conduct found proved met the hurdle of seriousness such that it amounted to misconduct. In relation to current impairment of fitness to practise, Mr McCartney reminded the Committee of the admissions made by the Registrant to his current employer and consistently thereafter including in relation to the facts alleged at particulars 7.1 and 7.2. He submitted that a circle could be placed around the misconduct, including the dishonesty, given that, as had been accepted by the Committee, the Registrant's motives were admirable and well-intentioned. This was a unique case on the facts in that the dishonesty was not, for example, for personal financial enhancement, personal reputation, or to cover up mistakes.

86. Mr McCartney referred the Committee to the Registrant's reflections in his Witness Statement and to his current employer's positive testimonial. He submitted that the Registrant had shown insight and been transparent since the events, and that there was no risk that he would repeat similar conduct in future.

87. In relation to Rule 5 of the Rules, Mr McCartney submitted that there was no risk to the public going forwards. He fairly accepted that the Registrant's conduct at the time arguably would have brought his profession into disrepute and that the Registrant had breached fundamental principles of his profession; he submitted, however, that there was no future risk of breaches and that the Registrant's integrity could be relied on going forwards. Indeed, the evidence was supportive of his integrity, despite the finding of dishonesty in the particular circumstances of this case.

88. In conclusion Mr McCartney accepted that a finding of impairment was needed in the public interest, but submitted that there was no risk of repetition and therefore a finding of impairment was not necessary to protect the public.

The Committee's decision on Misconduct

89. The Committee took into account the submissions on behalf of both parties and the relevant law and guidance.

90. The Committee accepted the submissions of Ms Gwilym in relation to the Council's Standards for Pharmacy Professionals (May 2017). It determined that there had been breaches of the following Standards:

- a. **Standard 1: Pharmacy professionals must provide person-centred care...People receive safe and effective care when pharmacy professionals consider the impact of their practice whether or not they provide care directly...take responsibility for ensuring that person-centred care is not compromised because of personal values and beliefs.** The Registrant's conduct, although he may have had best intentions, risked serious harm to the end-users of the medications, in circumstances which involved the onward supply of high risk controlled medication outside the lawful supply chain, with no or no adequate guarantees that end users would be subject to effective clinical oversight;
- b. **Standard 2: Pharmacy professionals must work in partnership with others... People receive safe and effective care when pharmacy professionals identify and work with the individuals and teams who are involved in the person's care.** By concealing this matter from his employers and colleagues the Registrant betrayed the trust they had in him to work in partnership with them; and there was no evidence of any meaningful professional working partnership between him and Dr MS in Sierra Leone, whom the Registrant simply trusted with the medications he was diverting to him, in breach of standard 2;

- c. **Standard 5: Pharmacy professionals must use their professional judgement.** The Registrant's priorities were entirely misguided, in that even though he may have been acting for admirable motives, he put whatever he thought were the needs of the community abroad above patient safety and in disregard for the standards of his profession. This demonstrated a grave error of professional judgement in breach of Standard 5;
- d. **Standard 6: Pharmacy professionals must behave in a professional manner at all times including in their personal life... People receive safe and effective care when pharmacy professionals are trustworthy and act with honesty and integrity:** By ordering and removing medication from the Pharmacy to which he was not entitled, and deliberately trying to conceal his conduct from others, the Registrant acted in breach of trust and was dishonest in breach of Standard 6.

91. 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).

92. The Committee was in no doubt that the facts found proved were very serious. He was ordering and removing from the Pharmacy significant quantities of controlled drugs over many months, which, as a pharmacist, (moreover as a qualified independent prescriber), he knew were highly addictive and open to abuse and misuse. This is particularly the case in relation to the diversion of Xanax; and Codeine and Phenergan which are known to be open to addiction and misuse – all three of which are medications for which safer alternatives could be supplied. The Registrant knew that his employer had refused to give him permission to engage in this activity, and for good reason.

93. The Registrant knew he was acting in breach of the regulatory framework in place to protect people against those dangers. There was, moreover, a clear danger to patient safety in the method of removal of the medication: taking it for storage at home and then placing it hidden in a barrel with other items and sent off abroad. Whilst he told the Committee that, unlike in the UK, the drugs are not generally misused by the public

in Sierra Leone, because of their scarcity among other things, he in fact had no way of knowing or following up where the medication was ending up and in what circumstances it was being consumed.

94. His conduct was, the Committee considered, contrary to the fundamental role of a Pharmacist to keep medicines within a lawful supply chain and to ensure their safe clinical use by patients. It represented a serious breach of his position as a professional, trusted as what is often described as a “gatekeeper” of high -risk medication.
95. In all the circumstances the Committee was satisfied that the Registrant’s conduct fell far short of the standards expected of registered Pharmacists. It was self-evidently serious enough to amount to misconduct.

The Committee’s Decision on Impairment

96. Having decided that the ground misconduct was made out, the Committee went on to consider whether the Registrant’s fitness to practise is currently impaired. It was aware that, in line with the case of Cheatle v GMC [2009]EWHC 645, it must consider whether, in circumstances such as this one, where there is misconduct at a particular time, that misconduct, in the context of the Registrant’s behaviour both before the misconduct and to the present time, is such as to mean that his fitness to practise is currently impaired.
97. In order to do so, the Committee considered the Registrant’s misconduct in light of Rule 5 of the Rules which sets out the criteria which the Committee must consider when deciding, in the case of any Registrant, whether or not the requirements as to fitness to practise are met.
98. Rule 5(2) of the Rules, also set out in paragraph 2.14 of the Council’s Good decision-making guidance (March 2024), states:

“In relation to evidence about the conduct or behaviour of the Registrant which might cast doubt on whether the requirement as to fitness to practise are met in relation to the registrant, the Committee must have regard to whether or not that conduct or behaviour –

- a) Presents an actual or potential risk to patients or to the public;*
- b) Has brought, or might bring, the profession of pharmacy into disrepute;*
- c) Has breached one of the fundamental principles of the profession of pharmacy; or*
- d) Shows that the integrity of the registrant can no longer be relied upon.”*

99. The Committee considered all of the evidence before it. The Committee took into account that there had been no concerns about the Registrant’s standard of clinical practice prior to these concerns. Indeed, his Superintendent, Danish Vitran, at his current place of work, who confirmed that he is aware of these regulatory proceedings, has said that having known the Registrant for more than six years, he has “always admired his work and excellence with our patients... he has shown nothing but professionalism” since being employed as a regular pharmacist in March 2022. He states that the Registrant takes great pride in his work, making sure that all aspects are completed to a high standard, and, as Superintendent Pharmacist, Mr Vitran “couldn’t ask for any more from him”.

100. The Committee also took into account the Registrant’s detailed reflections contained within his witness statement. He explained that he had been motivated by a desire to help the people of Sierra Leone and to give something back to his home country where he still had a lot of family and friends living. He did not like to see people suffering; he had personal experience of the war there as a child; he found it very emotionally difficult going back, and also to say no to people there asking him for things, because he could see how much they were suffering. He explained that he believed that the medicines he was sending abroad were being supplied by the doctor to meet genuine healthcare needs.

101. However, he accepted in his statement that he should not have been ordering medicines in this way and he was wrong. He accepted that he did not ask permission from Evans

Pharmacy to purchase the medicines, and that, as a pharmacist, he was, “of course” aware of the requirements for medicines supplies (either retail supplies or wholesale supplies) and he knew that he did not have prescriptions for the medicines that he was sending to Sierra Leone and the business did not have a wholesale dealer’s licence.

102. He went on to say that, having had time to reflect on his actions, he fully understands that his good intentions were misplaced.

103. The Registrant’s reflections in relation to remediation and the risk of repetition are set out below:

“I am sorry for my actions and regret the inconvenience caused to Evans Pharmacy and the Council. I have had time to discuss my actions with other peers in my profession, for example other pharmacists, doctors and other healthcare professionals. This has helped me to realise that although I was doing my best to help people, I did not also fully consider the potential risks of my actions in terms of patient safety – that is, that medication can be abused and misused and could I be sure that they were being used appropriately. I cannot therefore be sure that patient safety was not being compromised.

I understand that this is a significant error of judgement and that I failed to fully assess the patient safety implications of my actions as a pharmacist.

I understand through my reflections that my actions may also have undermined how the wider public may view the pharmacy profession as a whole in terms of trusting us to act appropriately. My actions also did not consider the profession as a whole and the importance of the profession’s reputation. I also failed to take into account the impact on the GPhC having to investigate these concerns. Finally I failed to consider the impact my actions will have on Evans as a company and the regulatory risks I exposed them to.

I understand that the consequences of my actions are not about me, but about their impact on patients, the wider public and the profession as a whole. I can reassure the Committee that I will never ever consider repeating any of these actions again...The Council can be assured that this is something that will never be repeated, and for which I am deeply sorry”.

104. The Committee first considered the Registrant’s conduct in the light of Rule 5(2) of the Rules.
105. The Committee was of the view that the Registrant’s reflections in his oral evidence to the Committee at this stage and also his prior written reflections as set out above were sincere and genuine: he had properly reflected on the mistakes he had made and on the serious risks to end-users of the medications he was diverting, into an environment over which he had no control and from which he received no guarantees as to safe use, despite having thought at the time, that his conduct could be justified. He had appropriately taken into account, in his oral and written reflections, not only the dangers to end users of the medications he was supplying, but also to the wider public interest; and acknowledged the betrayal of trust of his colleagues and employers which his conduct had entailed. His remorse appeared to the Committee to be heartfelt and genuine.
106. The Registrant has been practising as a pharmacist with no further concerns since 2022, according to the positive testimonial of the Superintendent at his current place of work.
107. In the light of these observations, the Committee was of the view that the risk that the Registrant would repeat his conduct was low, and therefore, turning to assess the risks to be assessed in accordance with Rule 5(2)(a) of the Rules, that he no longer presents an actual or potential risk to the public.
108. The Council next turned to consider whether any other sub-particulars of Rule 5(2) of the Rules are engaged by the Registrant’s misconduct.

109. There could be little doubt that the Registrant's conduct at the time, in ordering and removing large quantities of high risk medication including controlled drugs in breach of trust, by acting dishonestly, and by putting patients at risk of harm, as submitted by Ms Gwilym and fairly conceded by Mr McCartney, had the potential to bring the profession into disrepute – and therefore Rule 5(2)(b) was engaged; and also that he was breaching one or more fundamental principles of the Pharmacy profession – and therefore, Rule 5(2)(c) was engaged.
110. However, in relation to Rule 5(2)(d) – whether - the Committee accepted the submissions of Mr McCartney to the effect that it is possible, due to the very unique circumstances of this case, to take the view that the Registrant's proven dishonesty does not mean that the Registrant's integrity can no longer be relied on. There is no evidence before the Committee that the Registrant was dishonest in order to make personal financial gain – his employer's evidence was that he did pay cost price for the medications he ordered – and the evidence from Dr MS in Sierra Leone, supported by letters from the local Assistant Superintendent of Police and the local Reverend, is that the Registrant was motivated, as he has stated, by a desire to improve the suffering and the circumstances of the people in their community.
111. On the basis of all of the evidence before it, the Committee is of the view that Rule 5(2)(d) is not currently engaged – it is not the case that the Registrant's integrity can no longer be relied on.
112. The Committee next turned to consider the Registrant's proven misconduct in accordance with Paragraph 2.15 of the Council's Good decision-making guidance, (which is based on the well- known cases of Cohen v General Medical Council [2008] EWHC 581 (Admin); and CHRE v NMC and Grant EWHC 927 (Admin)). Paragraph 2.15 states as follows:

“ 2.15 The committee should also consider whether:

- *the conduct which led to the complaint is able to be addressed*

- *the conduct which led to the complaint has been addressed*
- *the conduct which led to the complaint is likely to be repeated*
- *a finding of impairment is needed to declare and uphold proper standards of behaviour and/or maintain public confidence in the profession”.*

113. The Committee began by acknowledging that it has found that the Registrant was dishonest, which is often said to be an attitudinal issue and therefore may be considered difficult to address. However, the Committee has also concluded, as set out above, that in the particular circumstances of this case, the Registrant’s attitude or character was not fundamentally dishonest. Although he did in fact deliberately conceal what he was doing from others and did betray their trust, he thought, at the time, that it was for a greater cause. The Committee was therefore of the view that, the Registrant’s conduct was, in principle, able to be addressed.

114. It also considers, for all the reasons above, that the Registrant’s conduct which led to the complaint has been addressed, and that it is not likely to be repeated.

115. It follows that the Committee does not consider that the Registrant’s fitness to practise is currently impaired on the personal component, that is, in relation to the protection of the public.

116. Turning however to the wider public interest, the Committee bore in mind the well-known case of CHRE v NMC and Grant EWHC 927 (Admin) – which are echoed in the last bullet point above at paragraph 2.15 of the Council’s guidance - where Mrs Justice Cox stated that a panel must consider whether “the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances” of a case.

117. The Committee assessed the seriousness of the Registrant’s breach of professional standards and trust. As has been found, the Registrant ordered and removed high risk medication including controlled drugs from the Pharmacy where he worked, and

dishonestly concealed what he was doing from others, with no or no adequate guarantees as to where those drugs were ending up. It was satisfied that, no matter what his excuse was at the time, what he did was so serious that the public would expect a finding of current impairment of fitness to practise in order to uphold and maintain professional standards and to maintain confidence in the profession and the regulator. It follows that the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

118. For all the reasons set out above, the Committee finds the Registrant's current fitness to practise to be impaired in the public interest, that is, in order to uphold proper professional standards and public confidence in the profession.

Decision on Sanction

119. Having found the Registrant's fitness currently impaired in the wider public interest, the Committee went 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 the least restrictive, taking no action, to the most restrictive, removal from the register, in order to identify the appropriate and proportionate outcome that meets the circumstances of this case.
120. The purpose of the outcome is not to be punitive, though it 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 in the profession, and to maintain and uphold professional standards. The Committee is therefore entitled to give greater weight to the public interest over the Registrant's interests.

Submissions

121. Ms Gwilym submitted that, bearing in mind the earlier findings of this Committee, the Registrant's conduct remains a very serious breach of professional standards and a breach of his trusted position as a pharmacist. She outlined the elements of the case which were aggravating, including the nature of the drugs, the quantities, the period of time of the events, the fact that the Registrant abused his position as a Responsible Pharmacist to deceive his way to obtaining drugs to which he knew he was not entitled, albeit that he paid for them. He had been found to be dishonest and his conduct undermined the integrity of the profession.
122. She submitted that cases involving dishonesty can be complicated and the Committee itself was best placed to assess the seriousness of the case having heard all of the facts. She submitted that the Committee should consider removal if it was of the view that remaining on the register is incompatible with continued registration but if it was not of that view then a suspension for 12 months was indicated.
123. Mr McCartney, on behalf of the Registrant, reminded the Committee that the purpose of this regulatory process is not to punish but to identify the appropriate regulatory objective, which in this case is protection of the wider public interest. the Committee should impose no greater restriction on the Registrant's right to practise in his profession than is necessary to achieve that regulatory purpose.
124. Referring to the Good decision making: Fitness to practise hearings and outcomes guidance (March 2024), ("the Outcomes Guidance"), Mr McCartney submitted that though there had been breaches of standards, the Registrant's dishonesty was misguided and ill-advised but for admirable and well-intentioned motives. The testimonials and the Registrant's evidence demonstrated that he is a pharmacist who first and foremost cares about people and wants to help people. As a relatively young professional he would have so many more years, if allowed to continue in registration, to help the public. Submitting that removal would be wholly disproportionate, Mr McCartney said that a well-informed member of the public who was aware of the unique context of this case may well ask, if

the Registrant were to be removed, why it was necessary to remove a registrant who had made a serious error but with good intentions and at a relatively early stage in his career.

125. Mr McCartney suggested that a period of suspension, shorter than 12 months in length, would be appropriate.

Decision

126. The Committee had regard to the relevant law and to the Council's Good decision making: Fitness to practise hearings and outcomes guidance (March 2024) ("the Outcomes Guidance"), to inform its decision.

127. The Committee took into account the submissions made by Ms Gwilym and Mr McCartney.

128. The Committee first considered what, if any, aggravating and mitigating factors there may be.

129. The Committee identified the following aggravating factors:

- This was not a one-off isolated incident: the Registrant repeated his conduct over many months;
- The Registrant only stopped when his conduct was discovered by his employer
- He ordered and removed relatively large amounts of high-risk medication, all of which except one (Phenergan) were controlled drugs, all known to be open to addiction and misuse;
- This was an abuse of his privileged access to the medications as a trusted professional, and as a Responsible Pharmacist.

130. The Committee identified the following mitigating factors:

- The Registrant is of previous positive good character and has no earlier findings against him;
- He paid for the medications;

- He made significant admissions at the earliest opportunity to his employer – indeed he admitted more, in relation to the materials and other medications he was taking, than his employer had discovered;
- The Registrant has provided positive professional references which do not suggest there are any issues with his standard of professional practice;
- He has been working as a pharmacist since 2022 with no further concerns, and provide a positive testimonial from his current superintendent;
- The Registrant thought at the time that what he was doing could be justified in his mind because it was for a good cause;
- Due to his personal and direct experience of the suffering of the community he was trying to help, he found it very hard to refuse when asked by the local doctor to supply medicines to the community.

131. The Committee next turned to consider the outcomes available to it in ascending order.

132. **Take no Action:** The Committee first considered where it would be appropriate to take no action, however it was of the view that this outcome would not be sufficient to reflect the seriousness of the Registrant's misconduct.

133. **Warning:** The Committee next considered whether issuing a warning would be appropriate but it decided that, for the same reason as above, a warning would not sufficiently mark the public interest.

134. **Conditions of Practice:** The Committee next considered whether to impose conditions of practice. The Outcomes Guidance states that conditions may be appropriate where there is evidence of poor performance or of significant shortcomings in a registrant's practice. However, the Committee was of the view that conditions would not be appropriate or relevant in this case since the particulars of allegation do not relate to the Registrant's standard of practice. In any case, the Committee considered that an order for conditions would not be sufficient to mark the seriousness of the matter and maintain the wider public interest.

135. **Suspension Order:** The Committee next considered whether suspension would be a proportionate sanction.
136. The Committee carefully considered the Council's Outcomes Guidance which indicates that circumstances in which suspension may apply are where:
- "The Committee considers that a warning or conditions [...] would undermine public confidence" or "When it is necessary to highlight to the profession and to 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."*
137. The Committee observed that Ms Gwilym had submitted that the Council's view was that it should consider removal or a 12- month suspension; whilst Mr McCartney had submitted that a period of suspension would be sufficient to satisfy the regulatory objective which the Committee had identified, namely protecting the wider public interest.
138. Mr McCartney had further submitted that a member of the public, if fully appraised of all the circumstances of the case, including the mitigating factors, would consider that the Registrant ought to be given the opportunity to return to practice following a suspension.
139. The Committee accepted that the Registrant had demonstrated insight into the seriousness of his breaches of professional standards and the trust placed in him as a professional, both by colleagues and by the public.
140. The Committee took into account the positive testimonials provided by the Registrant both from people in the UK and from people who know him in Sierra Leone. They all attest to the fact that the Registrant is well-liked and contributes positively to his communities both in the UK and in his home community abroad. It noted in particular Dr MS's letter from Sierra Leone which set out that the Registrant's charitable contributions

to the local community went as far as having saved lives. It also took into account that the Registrant has remained in employment as a pharmacist whilst this regulatory process has been on-going, and that his employer has provided a positive reference in relation to the Registrant's high standard of professional practice and the care he takes with all his patients.

141. The Committee has set out at earlier stages of this regulatory process its view of the seriousness of the Registrant's misconduct in ordering and removing high-risk medication most – but not all - of which was controlled medication, from the Pharmacy, when he knew he had no authority to do so. The Committee reiterates here its concern about the very real risks of harm which could be caused to end-users of the drugs which the Registrant was sending off hidden in barrels, in circumstances where he had no assurance beyond trust and hope, as to where they were going.

142. However, the Committee has also taken into account the full context and background of this unusual case. The Registrant explained that having left Sierra Leone aged 12.
PRIVATE.

143. The Registrant "felt that [he] owed the community hospital and the lead doctor"
PRIVATE.

144. The Registrant explained in his Witness Statement:

“It was always upsetting to me when I went back to Sierra Leone and saw how difficult it was for the community hospital, the staff and the patients with such acute shortages of medicines that are commonly available, and regularly thrown away, in the UK.

I cannot remember exactly when, but probably in around 2022, I started to take some medicines out of the patient returns bin in the Pharmacy to send back to Sierra Leone. This was not in any significant quantities. For example, if old paracetamol or ibuprofen came back in their original packs and were unused and untouched, I would take them out of the patient returns bin, remove the labels and put them in a separate box, which was known as the “Africa box” in the branch [...].

Looking back, I think that I was always motivated by a desire to help the people of Sierra Leone and to give something back to my home country where I still had a lot of family and friends living...The situation in Sierra Leone is very bad, and I did not like to see people suffering. ..I found it very emotionally difficult going back...I would often see upsetting things when I went back, and would have all sorts of people asking me to do things for them, or asking me to send them things. I found it very difficult to say no to these people, because I could see how much they were suffering”.

145. The Committee carefully considered, in light of all of its findings and the reasons expressed by the Registrant for what he did, whether suspension would be an appropriate outcome in this case. The Committee bore in mind its finding that this Registrant has sufficiently reflected on his misconduct such that he is unlikely to repeat it in future.

146. It fully accepted the submissions of Mr McCartney to the effect that this regulatory

process is not designed to punish registrants. The role of this Committee is however to ensure the protection of the public which includes the wider the public interest.

147. Taking all of the evidence before it into account, the Committee has decided that a period of suspension will be sufficient and proportionate to mark the seriousness of the Registrant's misconduct. A suspension would send out a signal to his fellow professionals that they should never abuse the privileged access they have to high-risk medications which can be addictive and are known to be open to abuse and misuse, by obtaining and supplying such medication otherwise than during the legitimate course of their practice.

148. It will thus be necessary and proportionate, to protect the wider public interest in maintaining public confidence in pharmacy and maintaining proper professional standards and conduct for pharmacy professionals.

149. The Committee is of the view that the suspension should be for the maximum period of 12 months. This will reassure the public that the regulator takes this type of misconduct seriously. Although the mitigating circumstances of this case set it apart from many others involving the dishonest diversion of medication including controlled drugs from the legitimate supply chain, even the best of intentions should never be an excuse for a professional to do so.

150. **Removal:** Having concluded that a period of suspension would satisfactorily send a message to the profession and the public about the seriousness of the Registrant's misconduct, the Committee considered whether removal was in fact more appropriate. The Committee took into account that removal is reserved for the most serious conduct. The Outcomes Guidance states that:

“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”.

151. Taking all of the evidence into account, including the very unique mitigating circumstances of this case, the Committee is of the view that, the Registrant’s conduct, though very ill-advised, falls short of being fundamentally incompatible with continued registration. Removal would be disproportionately punitive.

152. The Committee therefore directs that the entry in the Register of Mr Sylvester Emmanuel Vinkabb Jr, whose registration number is 2211346, be suspended for a period of 12 months, after which he will be permitted to return to the Register unrestricted.

153. That concludes this determination.