

GENERAL PHARMACEUTICAL COUNCIL

FITNESS TO PRACTISE COMMITTEE

129 Lambeth Road, London SE1 7BT

Wednesday 18 January 2012

Chairman: Mr Douglas Readings

Committee Members: Mrs Hilary Anderson
Mrs Ros Gardner

Committee Secretary: Ms Georgia Conrad-Leigh

CASE OF:

PATEL, Nirav Harshad
(Registration Number: 2060771)

DAY TWO
DETERMINATIONS

MR JEREMY LORAN, Case Manager, appeared on behalf of the General
Pharmaceutical Council

MR GRAHAM SOUTHALL-EDWARDS, instructed by the PDA appeared on
behalf of Mr Patel who was present

Transcript of the shorthand notes of T A Reed & Co Ltd
Tel No: 01992 465900

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A

DETERMINATION ON IMPAIRMENT OF FITNESS TO PRACTISE

B

THE CHAIRMAN: Mr Nirav Patel, the registrant, has now admitted all the factual allegations set out in the particulars of allegation, and I have already announced that they are found proved.

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The Committee has now considered whether the registrant's fitness to practise is impaired, bearing in mind that this question is not a matter of proof, but a judgment to be made by the Committee, and bearing in mind of course that the registrant has, through his representative, told us that he admits his fitness to practise is impaired.

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The Committee has heard evidence from several witnesses about the circumstances in which the events described in the particulars of allegation occurred. The Committee has also heard and considered the submissions of Mr Loran on behalf of the General Pharmaceutical Council and Mr Southall-Edwards on behalf of the registrant.

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The nature of Mr Patel's case was that he admitted taking £10 per day in cash from Sherry's Pharmacy when he was working there as a pharmacist at the beginning of October 2008, and has now admitted that what he did was inappropriate, contrary to the Code of Ethics, and dishonest. However, he at first maintained that what he did did not amount to stealing and was understandable in the circumstances. He said that his employers had promised to cover the cost of parking his car each day when he worked at the pharmacy but frequently failed to provide him with a parking permit. He said that after discussing the matter with his employers, he asked the pharmacy staff to arrange for £10 per day to be paid to him as cash expenses to cover the cost of the parking. He was not aware, he said, that they chose to carry out his request by retaining cash taken from customers and not recording in the till sales up to £10 per day.

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In advance of the hearing Mr Patel provided a witness statement in which he said that he denied giving instructions to the staff not to ring in purchases to the value of £10 each day. His statement said that he had asked the staff, that is the counter assistant Ms Lata Pandey, and the dispensing assistant, Ms Sherin Babwani, to pay him £10 by way of

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A expenses and left it to them to follow the proper procedure.

B When Ms Babwani was called as the first witness to give evidence, she said in clear terms that Mr Patel had instructed the staff not to ring into the till purchases up to the value of £10 each day. Mr Patel then changed his story. He gave instructions to his representative that the witness statement of the counter assistant Ms Pandey could be agreed. I am going to read from her statement because this is the basis on which we have made our findings. Her statement says:

C “Nirav said to me, this money is for my parking do not ring it in the till. I said to him ‘Why do you need £10?’ and he said ‘No one has given me parking facility and money for parking. I don’t want to pay from my own pocket, but don’t worry I shall speak to Raj and inform him myself.’ The next day he told me that by the end of the day, I had to give him £10 by not ringing in [the] sales that were being made ... So I kept the money on the side of the till.”

D The reference to “Raj” is to Mr Jagjeet Singh Bhogal, financial director of the company owning Sherry’s Pharmacy and a number of other pharmacies.

E Mr Bhogal and the superintendent pharmacist Mr Herminder Singh Gill also gave evidence in accordance with their witness statements. They told the Committee that Mr Patel had been called to a meeting on 14 October 2008, and he had admitted his wrongdoing, and had agreed to write a letter of apology and to give his employers a cheque for £80 by way of reimbursement.

F They were challenged, on behalf of Mr Patel, about the way in which Mr Patel had been invited to this meeting and it was suggested that he had been subjected to threats and bullying. Mr Gill agreed that Mr Patel might have left the meeting under the impression that if he apologised and repaid the money, he would not be reported to the police or to the Royal Pharmaceutical Society. It was suggested to both witnesses, but they denied, that they had agreed on behalf of his employers to pay Mr Patel’s parking charge.

G
H On the balance of probabilities, the Committee accepts that Mr Patel was told that his

A | employers would provide him with a parking permit and he believed that they were going to pay for it. The Committee also accepts that at the meeting with Mr Bhogal and Mr Gill, Mr Patel was probably subjected to some pressure to repay the money and write a letter of apology.

B | When Mr Patel gave evidence, he asked the Committee to alter his witness statement by striking out the suggestions he had previously made that the staff themselves had decided not to ring sales into the till. He otherwise confirmed the truth of his statement.

C | In accordance with the evidence and the admissions now made, the Committee has concluded that the registrant had no authority to take money from the till by way of expenses for car parking. Mr Patel knew he had no such authority because he had previously invoiced for such expenses and his employers had refused to pay them.
D | Furthermore, the registrant was acting dishonestly when he instructed the pharmacy staff that they should take £10 per day from the till and not ring up sales to that value. The Committee can see no reason for this instruction except an intention by Mr Patel to cover up the taking of the money, and Mr Patel appeared to the Committee to be effectively admitting this in his evidence.

E | When he gave evidence he would not agree that his actions would be regarded as dishonest by honest people but the Committee is sure that they would. It is also sure that Mr Patel himself must have known his actions would offend against the normally accepted standards of honest conduct.

F | The registrant's conduct, which includes dishonesty, falls below the standard to be expected of a registrant pharmacist and constitutes misconduct. The way in which the registrant has presented his case and given evidence shows that he continues to lack
G | insight into the gravity of this misconduct and the Committee concludes his fitness to practise is currently impaired.

H |

A

DETERMINATION ON SANCTION.

B

THE CHAIRMAN: The Committee has had regard to the General Pharmaceutical Council's published *Indicative Sanctions Guidance*. It has borne in mind that the purpose of any sanction is not to punish the registrant but to protect the public, to maintain the public confidence in the profession and to declare and uphold proper standards of behaviour by members of the profession.

C

The Committee has taken into account the submissions made on behalf of the General Pharmaceutical Council and on behalf of the registrant. It has noted the registrant's admission, both that the factual allegations are correct and that his fitness to practise is impaired, although it occurred at a very late stage.

D

This case is one of dishonesty. This Committee accepts that there may be degrees of dishonesty but does not accept that the registrant's dishonesty is of the lowest degree.

E

The registrant took only a relatively small amount of money but he did it in a way which was devised to hide what he had done from his employer. It was done openly, in the sense that the registrant instructed his staff to take the money from the till for him but that is an aggravating factor because the registrant thereby involved junior staff in a dishonest activity, putting them in a very awkward position, in conflict with their duty to their employers. The misconduct was in breach of the trust imposed on him as the manager of the pharmacy.

F

He has maintained a denial of his dishonesty up to the very latest stage and has thereby forced a reluctant witness to be brought on summons to the hearing to give evidence.

G

The Committee noted that the registrant's actions were premeditated in that they were repeated, albeit over a short period of time. It was misconduct by a person in charge of pharmacy premises.

H

As the registrant's representative has acknowledged, a warning would not be sufficient. It is necessary to send a message to the profession and the public that dishonesty, of whatever degree, is wholly unacceptable in a professional registered pharmacist.

A

It is not possible to devise any form of conditional registration directed to the registrant's misconduct which would be appropriate to maintain public confidence in the profession and adequately uphold proper standards of conduct; as Mr Patel's representative as again conceded.

B

The Committee notes that the registrant, despite his age, was inexperienced as a member of the profession and it accepts that he, wrongly and mistakenly, believed that he was entitled to take the money from his employers. He appeared to the Committee to be naive.

C

However, the Committee cannot accept that he has insight into his dishonest conduct. In particular, he has never made a clear statement about his current appreciation of the significance of his dishonest conduct. Mr Patel's own evidence has been very unsatisfactory: his replies to questions were frequently evasive and confusing, and resulted in a lack of clarity.

D

The Committee notes that Mr Patel has been working from time to time as a locum pharmacist since the misconduct occurred. That period has, however, been interrupted by a substantial stay in Canada, and some time during which he was not working whilst in the United Kingdom. He has been able to present a good testimonial from Mr W Jerjes, proprietor of the Harrow Pharmacy where he has been employed as a locum pharmacist. The money which he took has been repaid. There was no prior disciplinary history. It was an isolated series of incidents in an otherwise unblemished career which resulted in no actual or potential harm to patients.

E

F

G

In view of these matters, the Committee feels able to say that Mr Patel's behaviour is not fundamentally incompatible with registration as a pharmacist, and that therefore it is not necessary to order the removal of the registrant's name from the register. A period of suspension is, in the Committee's opinion, the appropriate and proportionate sanction. In order to ensure that it conveys a clear message about the unacceptability of this behaviour to the profession and the public, the period of suspension will be 9 months.

H

A The Committee has heard from Mr Patel that his continuing professional development
record is not as complete and up-to-date as it should be and also that he has not been
practising full-time. He may therefore be out of touch with current developments in
B a fast-moving profession and the Committee proposes to direct that there should be
a review of this suspension order before the end of the period of 9 months. At the review
hearing, the registrant will be expected to provide evidence that he has kept his
knowledge of developments in pharmacy up-to-date.

C

DETERMINATION ON COSTS

D

THE CHAIRMAN: Mr Loran, we have considered the application. In principle the
Committee would wish the General Pharmaceutical Council to endeavour to recover costs
wherever this sort of thing happens. In the particular circumstances of this case, we do
not think that it is appropriate to make an order.

E

Our reasons are as follows: first, we take the view that the essential costs of the hearing,
the establishment costs as they might be called, do not fall within rule 48 because it
covers the costs incurred by the parties. In that context, the party on the General
Pharmaceutical Council side is the General Pharmaceutical Council but in its capacity as
a prosecutor, rather than in its capacity as the tribunal deciding the case.

F

So it is only the costs incurred by the prosecutor, which, it appears to us, would come
within rule 48. That means in practice in this case that it is the cost of the attendance of
extra witnesses that might be the subject of such an application.

G

As we have discussed, there are three witnesses who might be relevant in this case,
Mr Bhogal, Mr Gill and the Society's Inspector, Mrs Robson. In respect of
Messrs Bhogal and Gill, we consider that Mr Edwards did get some advantage from his
questioning of them for his client, which was relevant either to a contested case or to one
where he admitted that the facts were true and his fitness to practise was impaired so that

H

there was some reason to require their attendance and therefore it cannot be said that the

A respondent was acting unreasonably in requiring them to attend.

B In respect of the Inspector, you have not been able to put before us any evidence to show that her witness statement was tendered for possible agreement in advance. In the absence of that evidence, we are inclined to think that there is no obligation upon the respondent to volunteer to accept the evidence in statement form. Therefore, we cannot say that the respondent acted unreasonably in that respect either.

C Another consideration, which might trump the others in fact, is that we note that the rule would require an order, if it was made, to be assessed having regard to the respondent's means. The evidence we have, such as it is, about the respondent's means suggest that they are limited. Of course we cannot lose sight of the fact we have just made a suspension order which is going to restrict the respondent's earning power for nine months.

D In any event it seems likely that the amount that might be assessed, if an order was made, would turn out to be less than an amount which was economic to go through the assessment exercise for, and it might very well turn out to be uneconomic all together. In short we are not going to make an order and, as I said at the beginning, that does not mean to say that we disapprove of the Council's resolve to try to recover costs in these circumstances.

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B a fast-moving profession and the Committee proposes to direct that there should be
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