

GENERAL PHARMACEUTICAL COUNCIL
FITNESS TO PRACTISE COMMITTEE

129 Lambeth Road, London SE1 BT

Monday 23 January 2012

Chairman: Mr Christopher Gibson QC

**Committee Members: Mr Roy Fitzsimmons
Mrs Glenys Stacey**

Committee Secretary: Mr Mark Mallinson

CASE OF:

**ALVAREZ-REMENTARIA, Maria Del Rosario Ferrero
(Registration Number: 2057434)**

APPROVED DETERMINATIONS

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

MR GRAHAM SOUTHALL-EDWARDS, of EPLS, appeared on behalf of Miss
Alvarez-Rementaria, who was not present.

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

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A (The hearing commenced at 9.48 am)

(The Committee went into camera at 12.24 pm and returned into open session at 12.50 pm)

B **DETERMINATION ON FACT**

THE CHAIRMAN: This is our determination on the facts. Ms Alvarez-Rementaria was cautioned by the police for theft from Boots, where she was employed as a pharmacist, nearly seven years ago on 28 March 2005.

C The facts leading up to this caution are these. In circumstances that are unclear (but do not in fact matter) she arranged for a large number of points to be put on a Boots Advantage card that was not hers, and when she was not genuinely entitled to those points. She then, over a period of four days from 18 February to 22 February 2005, D redeemed the points for a DVD recorder and a quantity of cosmetics to the total value of £204, in a total of four transactions. It seems that all of these goods were recovered from her home, and they were recovered in an unused state so that they could be E returned to the store and sold. There was no loss to the store in terms of the stock.

Once she had been cautioned by the police the Rules required Ms Rementaria to report that caution to the Society as it then was, within 7 days, but she failed to do this. In the end she reported the caution on her application for retention that was received on 21 January 2009; that was three years ago, but nearly four years too late.

F She faces an allegation of misconduct that alleges the caution and the failure to report; importantly it is alleged at paragraph 6 of the particulars of allegation that the failure to report was (i) misleading, and (ii) dishonest.

G Ms Rementaria has not appeared before us today but she has been represented by Mr Edwards. We have been told that she was intending to attend this hearing but that her father has been admitted to hospital and had surgery for the removal of a tumour on Saturday, and she is expected to remain with him to help with his care in hospital. We H have seen a medical certificate in Spanish that appears to be to that effect, and we have been invited to continue with this hearing in her absence.

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We agreed to do so because of the time that has now elapsed since the caution was administered, and because of the specific request by Ms Rementaria to have the matter dealt with now at this hearing.

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She accepts the facts relating to the caution, and she accepts that she failed to report the caution within seven days. She accepts that her conduct has been misleading, but she disputes the allegation that she was acting dishonestly in failing to report the caution, or that by failing to report within those seven days she was being deliberately misleading. It is her case that the failure to report was born out of ignorance of her obligation to report rather than the result of any dishonesty.

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She says that she did not realise that the caution for theft had to be reported until 2009. We have seen the form by which she reported herself. In box 2.5 of the 'Something to Declare' form she wrote, "Warning about misuse of a Boots Advantage points card. Just a warning and no fine." Then in box 2.6 she wrote, "My sincere apologies for not having informed you previously, if I had to, because I was not aware that could be called caution . Many thanks."

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We have also seen blank copies of a number of forms which she completed in the years when she failed to disclose this caution before the report in 2009. Each of those forms refers to the need to disclose a caution, and two of them refer specifically to Guidance on Criminal Convictions published by the Society.

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We have also seen part of an email in which she appears to attempt to explain her failure to report on the basis that she thought that she had received a warning and was unaware that it should have been categorised as a caution.

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We have grave doubts about that explanation; there is no doubt that it is unsatisfactory, and a professional should be aware of her reporting obligations when made the subject of a police caution. But we have reminded ourselves that this is an issue where the burden of proof is on the Council and in which we have to apply the

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civil standard of proof.

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It is our judgment that the issue can simply be looked at on the basis of whether we accept that it has been shown that Ms Rementaria was aware, and that she must have been aware, that she was under an obligation to report this matter, in which case the failure to have done so would have been deliberate and dishonest, or whether that has not been established.

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We have considered the fact that nearly four years after the event she did in fact report the matter, and it has been expressly accepted to us that there is no suggestion that she had been found out at that stage; this was something that, in the end, she reported voluntarily.

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Having given this matter anxious consideration we are not satisfied that Ms Rementario was dishonest in failing to report these matters within seven days, and in this regard we find that the dishonesty alleged in paragraph 6(ii) in the particulars of allegation has not been established.

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That deals with the disputed matter, and we now continue on to the impairment aspect.

(The Committee went into camera at 1.02 pm and returned into open session at 2.05 pm)

DETERMINATION ON IMPAIRMENT

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THE CHAIRMAN: Before the lunch adjournment we found that the Council had not established that Ms Rementaria's failure to report her police caution had been dishonest, and we were also given the statement from Ms Rementaria in which she accepted that her fitness to practise is impaired as a result of her misconduct.

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Mr Edwards pointed out to us that under the 2010 Rules we still have to form a view of our own as to whether her fitness to practise is impaired.

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This episode of theft was a long time ago, but no attempt has been made to assert before us that by her conduct since Ms Rementaria can be considered that her fitness

A | to practise is no longer impaired simply by virtue of her conduct, and the passage of time.

B | The inescapable fact is that this was a serious case. There were aggravating features in that: (i) it was a theft from her employer; (ii) that it had involved premeditation and planning; (iii) that it had continued over a number of days before she was caught; and (iv) initially she denied the allegations when challenged.

C | We are quite satisfied that the admission was properly made and that her fitness to practise is currently impaired.

Now we move on to the sanction stage. Mr Loran, is there anything more that the Council wishes to put before us?

D | (The Committee went into camera at 2.34 pm and returned into open session at 3.18 pm)

DETERMINATION ON SANCTION

E | THE CHAIRMAN: Ms Rementeria faces a charge before us today based on two allegations. For reasons which I set out in our determination on facts she is not here today, but we are proceeding in her absence with her consent and while she is represented by Mr Edwards.

F | The first part of the allegation against her is that she was cautioned for an offence of theft on 28 March 2005. The facts of that caution were that while she was working as a pharmacist at a branch of Boots in Norwich she arranged for a large number of points to be put on a Boots Advantage card that was not hers, and when she was not entitled to those points. She then, over a period of four days from 18 February to 22 February, redeemed those points for a DVD recorder and three items of cosmetics to the total value of £204. All of the goods were recovered from her home, and they were recovered in an unused state so that they could be returned to the store and sold.

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A She was interviewed in the store by a security manager, and after she had initially
denied any wrongdoing she was reported by Boots to the police, and in due course she
admitted the thefts and accepted the caution. She was dismissed by Boots in March
B 2005, but appears to have continued to work in the UK, at least on occasions, as a
locum, until moving back to her native Spain, which she appears to have done in or
about the autumn of 2007.

C The second part of the allegation against her is that she failed to notify the caution to
the Society, as it then was, within seven days, as required by the Rules that were
current at the time. In fact she reported this caution nearly four years later, but still
three years ago, when she set it out in her application for retention form that was sent
to the Society in January of 2009. She told us through her statement that she was
unaware that the caution had to be disclosed at all.

D One matter only remained in dispute before us; that was the question of whether Ms
Rementeria had acted deliberately and dishonestly in failing to report the caution
within seven days, as she was required to do, or whether she had acted out of
inadvertency and ignorance.

E On the basis of all of the evidence we were not satisfied that it had been established
that she had been dishonest in this regard, but of course the original thefts over a
period of days for which she received the caution were dishonest.

F We now come to the issue of sanction. We have considered the guidance given in the
cases of *Zygmunt*, *Yeong* and *Grant*, which have been helpfully drawn to our attention
in Mr Loran's skeleton argument, and in particular we have also considered the
G passage in *Zygmunt* where Mr Justice Mitting adopted the summary of Dame Janet
Smith in the 5th Shipman Inquiry, where she considered that an impairment of fitness
to practise would arise where, in that case a doctor:

- a. presents a risk to patients;
- b. brings the profession into disrepute;
- H c. breaches one of the fundamental tenets of the profession; or

A d. has acted in such a way that his or her integrity can no longer be relied upon.

B It is our view that three of the conditions set out in *Zygmunt* are present here. Firstly, that by her actions Ms Rementeria was likely to bring the profession into disrepute; secondly that she had breached fundamental tenets of the profession; and thirdly that she had acted in such a way that on the basis of her theft from her employers her integrity could no longer be relied upon.

C We reminded ourselves that dishonesty is at the top end of the spectrum of misconduct for a professional person, and it is in this context that we address the issue of sanction.

D Theft is always a serious matter. This had aggravating features. It was theft from Ms Rementeria's employer; it involved premeditation and planning; and it was continued over a matter of days rather than being a one-off, or one item taken on the spur of the moment. This was the premeditated theft of goods from Boots. Furthermore, Ms Rementeria initially denied the theft when it was investigated by Boots, although a little while later she did admit the theft to the police.

E We have reminded ourselves that the purpose of sanction is to protect the public, to maintain standards in the profession and to maintain public confidence in the profession. It is not to punish, although of course any sanction that we impose would usually have the effect of being a punishment on a Registrant. It is also the case that any sanction that we impose has to be proportionate to the circumstances of the case and fair to Ms Rementeria.

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G As I have said, there are aggravating factors here. The first and most important is that this offence involved dishonesty. The second is that although this matter is not a pharmacy matter we find that Ms Rementeria must have used her position in the pharmacy to take advantage of the ability to put points that she was not entitled to on the Advantage card. Thirdly, her actions were premeditated, in that this theft involved

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A | some planning and the method was used over a number of days. She should have realised that the police caution was something that had to be reported.

B | The public rightly expects the highest standards from professionals, and that includes admitting and acknowledging to their regulatory body any failure to live up to those standards.

C | We have adopted the approach here of imposing the least possible sanction that we consider meets the facts of the case. In response to the aggravating facts that I have referred to we of course accept that this was not a case where any patient was ever at risk, or where any of the misconduct impinged on Ms Rementeria's competence or skill as a pharmacist.

D | We know little about Ms Rementeria, but we understand that she practises in Spain, and she asserted in her statement that she has had no other trouble with the police or any trouble with her regulatory body in Spain. We do not know anything about her circumstances, apart from the fact that she appears currently to be helping with the care of her father, and Mr Loran could not tell us what the effect of any sanction we might impose here in the UK would have on her and her practise in Spain.

E | Ms Rementeria must be aware that this profession, like other professions, is founded upon honesty and integrity, and public confidence demands the highest standards. It is our function to maintain public confidence and standards in the profession in the
F | UK.

This caution was received nearly seven years ago, although four years of that delay has been caused by Ms Rementeria's failure to report it.

G | In the end we have come to the view that public confidence in the profession demands no lesser sanction than a suspension of Ms Rementeria's registration. We have come to the view that the misconduct falls short of being fundamentally incompatible with continued registration, but a message needs to be sent out to the profession and to the
H | public that this dishonest conduct was unacceptable and unbecoming a pharmacist.

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The sanction that we impose is a suspension of 6 months. We do not consider that this is a case in which a review is necessary, and we do not order one, so this sanction will last for 6 months and then expire.

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