

THE GENERAL PHARMACEUTICAL COUNCIL
FITNESS TO PRACTISE COMMITTEE
(Sitting as the DISCIPLINARY COMMITTEE
UNDER THE PHARMACY AND PHARMACY
TECHNICIANS ORDER 2007)

129 Lambeth Road, London SE1 7BT

Wednesday 11 January 2012

Chairman: Mr Douglas Readings

Committee Members: Mr Peter Wrench
Mr Edward Mallinson

Committee Secretary: Ms Georgia Conrad-Leigh

CASE OF:

DOAL, Harwinder Singh
(Registration Number: 2049531)

DAY 2

DETERMINATION

MS NIRUPAR UDDIN, Solicitor, appeared on behalf of the General
Pharmaceutical Council.

MR KEVIN MCCARTNEY, of Counsel, appeared on behalf of Mr Doal, who
was present.

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

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A (The hearing re-commenced at 9.28 am)

(The Committee went into camera at 3.41 pm and
returned into open session at 5.12 pm)

DETERMINATION

B THE CHAIRMAN: I am going to read the determination of the Committee. It is a
very long determination and, Mr Doal, I do not want to keep you in suspense, and I
am very sorry to tell you that we have decided that you should not be restored to the
C Register at this stage. The Committee does not believe that you need to be kept
permanently off the Register; we hope that you will come back eventually, but not
yet.

D That is the effect of this decision, which I am going to start reading out. If you decide
at any stage that you have had enough and you do not want to hear any more, and you
decided to leave, we will understand, but please do so quietly if you want to. Thank
you.

E This is the application of Mr Harwinder Singh Doal for restoration to the Register
under Article 55 of the Pharmacists and Pharmacy Technicians Order 2007. Mr Doal
was first registered with the Royal Pharmaceutical Society on 26 July 1999. On 14
December 2005 the Statutory Committee of the Society found it proved against him
that he had five separate criminal convictions and that they were such as to render him
F unfit to be on the Register. It directed the removal of his name from the Register, and
that removal had effect in March 2006. Mr Doal's application to be restored is dated
26 May 2010. As required by Rule 11 of the Royal Pharmaceutical Society of Great
G Britain (Fitness to Practise and Disqualification, etc.) Rules 2007, the application for
restoration has been made in the relevant form, supported by "at least two certificates
attesting to the applicant's identity and good character, one of which must be given by
a registrant in good standing with the Society". Mr Doal has also submitted a
statutory declaration and a good deal of other information intended to demonstrate his
fitness to return to practice. This includes evidence of activities designed to address
or learn from the original allegation, evidence of learning activities designed to keep
H up to date with skills and knowledge and with developments in practice, and evidence

A | demonstrating insight into the gravity of the allegation which resulted in his removal from the Register. The procedural formalities for an application for restoration appear therefore to have been complied with.

B | Article 55(4) of the 2007 Order provides that:

“An application under this Article shall not be granted unless the person applying for his name to be restored to the Register provides such evidence of his fitness to practise as the Disciplinary Committee directs”.

C | Rule 45 (2) of the 2007 Rules states that at a restoration hearing:

“...the Disciplinary Committee shall only grant the application if the applicant has proved that he is entitled to be registered.”

D | The burden is clearly on the pharmacist applying for restoration to show that he is now fit to practise. Whether the applicant is fit to practise is a question of judgment, not proof, but the civil standard of proof applies to deciding disputed issues of fact.

E | In most restoration applications the facts are not in dispute, but in this case there have been a number of disputed issues of fact. They do not concern the original convictions or the circumstances of committing the offences which led to the convictions. Those matters were presented to the Statutory Committee in December 2005, and this Panel of the Fitness to Practise Committee, sitting as a Disciplinary Committee, has been provided with transcripts of that hearing and of that Committee’s determination. For the record, the original convictions were as follows.

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G | First, on 2 February 1997 Mr Doal and another person forced open the door of a neighbour’s house. When the police attended Mr Doal produced a flail, or nun chucks, and moved towards a police officer, who was obliged to draw his baton and hit Mr Doal to defend himself. At Luton Magistrates Court on 15 April 1997 Mr Doal pleaded guilty to offences of affray, criminal damage and possession of an offensive
H | weapon, and was sentenced to 28 days imprisonment.

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Secondly, in the early hours of 25 February 2000, outside a public house in Broad Street in Birmingham, Mr Doal and two other men assaulted a man, punching him in the face, stomach and upper body, and then kicked and jumped on him when he had fallen to the ground. At Birmingham Crown Court on 22 December 2000 Mr Doal again pleaded guilty to an offence of affray, and he was ordered to carry out 160 hours of community service.

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Thirdly, on 8 December 2003, in a supermarket pharmacy where he was working as a locum pharmacist, Mr Doal attacked a pharmacy assistant after questioning him about his religious beliefs, and threatened to kill him with a broken glass bottle. After pleading not guilty, he was convicted at Nottingham Crown Court of religiously aggravated common assault, and sentenced on 12 January 2005 to a Community Punishment and Rehabilitation Order, under which he had to carry out 100 hours of community punishment (that is unpaid work or community service) and to attend a Calm Programme, which appears to be an anger management course. This Committee has been informed that Mr Doal did not in fact attend that course.

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Fourthly, Mr Doal failed to attend the Probation Officer in accordance with his Community Punishment and Rehabilitation Programme on 20 March and 10 April 2005, and on 13 June 2005 at Birmingham Magistrates Court he was convicted of a breach of the Order and was fined £50.

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Fifthly, and last, on 10 June 2005 Mr Doal was driving a car with a level of alcohol in his breath just over double the legal limit. The car crashed into a house, and when the Police attended they found he was drunk. At Birmingham Magistrates Court on 24 June 2005 he pleaded guilty to driving with excess alcohol and was fined and disqualified from driving for 16 months.

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These convictions were obviously so serious that the Statutory Committee had no alternative but to direct removal from the Register. On behalf of the General Pharmaceutical Council, Ms Uddin has submitted that those offences were so serious that even today public confidence in the profession would be undermined by

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A restoration of Mr Doal's name to the Register, and that therefore Mr Doal is not fit to practise. Mr McCartney, who represents Mr Doal, has acknowledged that the offences were serious, but submitted that public confidence would not be undermined by Mr Doal's restoration to the Register because of :

- B
- a. The length of time that has passed since the misconduct arose;
 - b. The manner in which Mr Doal has addressed his problems;
 - c. Dr Sain's reports;
 - d. The testimonials provided by patients and professionals.

C Both parties have drawn the Committee's attention to the Guidance on the Consideration of Applications for Restoration to the Register published by the Royal Pharmaceutical Society, and the Committee has had regard to this guidance and applied it to its consideration of this application. In particular there is at paragraph 5
D of the guidance a non-exhaustive list of matters to be taken into account by the Disciplinary Committee.

E The problems which Mr Doal claims to have addressed are principally his abuse of alcohol and his uncontrolled anger. On 16 September 2005 the Royal Pharmaceutical Society wrote to Mr Doal a letter, which appears in the bundle of documents at page 56, asking him to transfer his registration from practising to non-practising status pending investigation of medical problems, and advising him of sources of help which might be available to him. Mr Doal did transfer his registration, but by the time of the
F Statutory Committee hearing in December 2005 he had not succeeded in taking up help or support that was available. However, the case advanced at the hearing of this restoration application, in Mr Doal's own evidence and in the written and oral evidence of other witnesses and the submissions made by Mr McCartney, is that at
G some time in 2006 Mr Doal made a life-changing commitment to give up drinking alcohol and to tackle his anger and other problems.

H Mr Doal told the Committee that since that time he has never consumed alcohol. He called Dr Sain, a consultant psychiatrist with Birmingham and Solihull Mental Health Trust to give evidence. Dr Sain's evidence, which the Committee heard in private to

A protect the confidentiality of Mr Doal's health records and to enable Dr Sain to speak
frankly and be questioned fully, was to the effect that he believed Mr Doal had indeed
abstained from alcohol since 2006. He referred to the results of blood testing carried
out in April 2007 and August and December 2008, and, most recently, September
B 2011. Mr Doal has been under Dr Sain's supervision since early 2007, and Dr Sain
has observed no sign of renewed alcohol dependency. Dr Sain believes Mr Doal is a
rare example of success by means only of willpower and the use of support
organisations. Dr Sain does not think that it would have been possible for Mr Doal to
have drunk alcohol secretly at any time since 2006 without it manifesting itself as
C dependency and uncontrolled drinking.

Mr Doal has also put before the Committee letters from eight pharmacists and
numerous other people of good character who, being aware of the circumstances
which led to Mr Doal's removal from the Register, nevertheless testify to his current
D good character and fitness to practise. The pharmacists who have written letters
include Mr Neemesh Purohit, who also attended the hearing to provide support to Mr
Doal, and who was called to give oral evidence. He met Mr Doal regularly during the
period from 2005 to 2009 on approximately a monthly basis, and less frequently since
E then. Unfortunately his contact with Mr Doal was interrupted in the early months of
Mr Doal's employment at Nucare Pharmacy by an extended trip to India. Mr Doal
has also submitted certificates to confirm that he has completed anger management
training and courses on anxiety management and assertiveness training, and to
confirm that he successfully completed a two part Return to Practice course in January
F and February 2009.

The disputed issues of fact mentioned earlier arise in this way. Ms Uddin, on behalf
of the Council, called two witnesses, Mr Gurnam Singh and Mr Kameljit Singh
G Dhinsa, to give evidence. They are both registered pharmacists. Mr Dhinsa is a
director of Nucare Healthcare Ltd which trades as Nucare Pharmacy at two
pharmacies, one in Cannock in Staffordshire and the other in Aston, Birmingham. He
is the superintendent pharmacist and usually works at the Cannock pharmacy. From
about September 2007 until December 2010 Mr Singh was self-employed and was
H contracted to work as the pharmacist manager of the Aston pharmacy. From about

A | October 2007 Mr Doal was employed at the Aston pharmacy as a counter assistant, part-time at first and full-time from about April 2008.

B | On 13 June 2008 Mr Doal was dismissed, and he brought a claim against Nuicare Pharmacy in the Employment Tribunal, asking for compensation and for his job back. Since he had not been employed for the minimum period of twelve months the basis of his claim had to be that his dismissal was automatically unfair because his employers had not followed the correct procedure in dismissing him. He alleged that he had been dismissed as a result of writing a letter to Mr Dhinsa in which he made suggestions for improving the business of the Aston pharmacy, together with criticisms of the way in which that business was conducted, including allegations of overcharging. He alleged that he had written a number of letters asking for written reasons for his dismissal and for reconsideration of the decision to dismiss him. The employers denied having received any of these letters. For their part, they alleged that D | Mr Doal had been dismissed because he had failed to respond to a series of verbal warnings about his misbehaviour, which had been confirmed in letters given to him.

E | The misbehaviour which they alleged against Mr Doal included attending work when he was under the influence of alcohol. In answer, Mr Doal denies that he ever drank alcohol at any time when he was employed by Nuicare Pharmacy. He also denies ever receiving any warnings or any of the letters in which these warnings are said to have been recorded. He points out that Nuicare Pharmacy settled the Employment Tribunal proceedings shortly before the scheduled hearing, and paid him £7,500, which was F | almost the whole amount he had claimed by way of compensation.

G | Mr Singh and Mr Dhinsa both gave evidence on oath before this Committee, producing and confirming the truth of their detailed witness statements which were originally compiled for the purpose of defending the Employment Tribunal proceedings. Mr Singh told the Committee that Mr Doal had regularly turned up for work unkempt and smelling of alcohol. He said that Mr Doal was away from work, without leave, from 7 February to 12 March 2008, and that when he returned he had started driving again and the alcohol problem did not seem so bad. However, he said H | that there was a staff training day in May 2008 at which Mr Doal drank to excess, and

A | his work colleagues confiscated his car keys to prevent him driving and took him home themselves. Those work colleagues did not give evidence to the Committee.

B | Mr McCartney questioned Mr Singh about a number of inconsistencies in his evidence, including the alleged period of absence without leave, for which it appears that Mr Doal was actually paid in full, and about diary records, and the disputed letters alleged to have been sent by each side of the employment dispute to the other side.

C | Mr Dhinsa gave evidence in accordance with his witness statement, but since he worked principally at the Cannock pharmacy he was not able to give direct evidence concerning the allegations of attending for work under the influence of alcohol. It became obvious in the course of his evidence that he had no recollection of any of the events which he was being asked about. He had not re-read the written statement
D | which had been prepared for him in connection with the Employment Tribunal case. He contradicted himself several times, and it appeared that he was guessing how to answer the questions put to him. The Committee formed the opinion that no reliance could be placed upon Mr Dhinsa's evidence and, at Mr McCartney's invitation, gave
E | an indication that the Committee proposed to attach no weight to it.

F | In his own evidence, Mr Doal repeated his denial of having consumed alcohol since 2006, and his denial of all the allegations made against him by Mr Singh and Mr Dhinsa concerning the period of his employment at Nuicare Pharmacy from 2007 to 2008.

G | In attempting to resolve the disputed issues raised by the contradictory evidence of Mr Singh and Mr Doal this Committee has gained very little assistance from the documents. In particular the Committee has found it impossible to accept the evidence of either Mr Singh on the one side, or of Mr Doal on the other side, about the delivery of the disputed letters concerning Mr Doal's employment. On the balance of probabilities the Committee has concluded that both sides retrospectively fabricated letters for the purpose of the Employment Tribunal proceedings, and that
H | diary entries cannot be relied upon as being genuine contemporaneous entries. This

A means that both Mr Singh and Mr Doal have included some untruths in the evidence they have given to the Committee.

B The Committee does not place any weight upon the evidence of Mr Dhinsa. Apart from the matters already mentioned there is a real risk that he might have been motivated in giving evidence against Mr Doal by resentment of the Employment Tribunal proceedings.

C Mr Singh, however, although he was willing to be a party to Mr Dhinsa's attempts to mislead the Employment Tribunal about such matters as warning letters, does not have any apparent motive to act maliciously against Mr Doal. The Committee accepts that he originally engaged Mr Doal as a pharmacy assistant with the commendable object of giving him an opportunity to overcome his problems and work in a pharmacy business. The Committee accepts Mr Singh's evidence that there were initially problems with Mr Doal attending work under the influence of alcohol, but that Mr Singh persevered with Mr Doal, partly because of the difficulty of finding good staff in the area of Aston where the pharmacy was situated. The Committee was impressed by the way in which Mr Singh expressed himself when he was asked whether he might be mistaken about his evidence that Mr Doal had been drinking alcohol, which might very seriously affect Mr Doal's future career. He said to the Committee that he hoped Mr Doal had "been able to sort himself out."

F The Committee has concluded that it accepts the truth of Mr Singh's evidence concerning Mr Doal's consumption of alcohol in the period between October 2007 and June 2008. It must therefore reject Mr Doal's evidence that he has not consumed alcohol since 2006.

G The Committee appreciates that this conclusion is contrary to the opinion of Dr Sain, and that his opinion was based not only on his own impression of Mr Doal but on the objective scientific evidence of the results of blood testing. The Committee has carefully considered that evidence and has concluded that the level of Mr Doal's consumption of alcohol was not high enough to affect the results of the tests that were

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A | carried out. Mr Doal was not subjected to random testing, or testing specifically for the presence of alcohol, as opposed to the long-term effects of alcohol.

B | This conclusion may also appear to be contrary to the evidence of professional colleagues and others who have known Mr Doal during the last five years and who believe that he has not been drinking alcohol. However, it may be that Mr Doal resumed the consumption of alcohol in 2007 after an initial period of abstinence, and that he became abstinent again after about June 2008, and even close acquaintances may not have observed this period of relapse.

C | The Committee has regretfully concluded that it cannot accept the evidence given by Mr Doal concerning his abuse of alcohol, which was an important cause or contributory factor in the commission of the offences which gave rise to the convictions which brought him before the Statutory Committee. The conduct of the applicant since removal from the Register is an important matter which is specifically identified as a matter to be taken into account in paragraph 5 of the published Guidance on the Consideration of Applications for Restoration to the Register. As Mr Doal accepted when he was giving evidence, it is essential that a person recovering from alcohol dependency must be true to himself, and there is an important public safety issue in ensuring complete honesty in a person who is permitted to practise as a pharmacist.

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F | The Committee has therefore decided that Mr Doal has not been able to satisfy the Committee that he is now fit to practise.

G | Independently of matters of credibility the Committee has weighed the seriousness of the original convictions against the time which has passed and the hardship which Mr Doal must obviously have suffered as a result of his removal from the Register. It has taken into account the evidence contained in the testimonials and letters produced in evidence, which demonstrate that a considerable number of professionals and patients appear to be sympathetic to Mr Doal. It has come to the conclusion that public confidence in the profession would be undermined if Mr Doal were restored to the Register only 6 years after being removed from the Register as the result of the

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A | alarming series of serious offences which Mr Doal committed. For this reason also
Mr Doal is not fit to practise.

B | The Committee does not believe that Mr Doal will never be able to be restored to the
Register. The Committee accepts that he is currently abstinent from alcohol and has
made serious efforts to maintain his professional knowledge and rehabilitate himself.
However, it is satisfied that it is at present too soon for him to be restored without
undermining public confidence in the profession.

C | The Registrar will be advised that Harwinder Singh Doal is not entitled to be restored
to the Register.

D | That concludes our determination. I just have to thank everybody involved in this for
their help, and to express my regret once again to Mr Doal, but to hope that things
may get better in the future. Thank you very much.

(The hearing concluded at 5.32 pm)

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