

GENERAL PHARMACEUTICAL COUNCIL

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

FITNESS TO PRACTISE COMMITTEE

129 Lambeth Road, London SE1 7BT

Thursday, 5 January 2012

Chairman: Mr Christopher Gibson QC

Committee Members: Dr Kerr Wilson
Mr Peter Jones

Committee Secretary: Ms Georgia Conrad-Leigh

CASE OF:

KONDRASOVA, Juliya
(Registration Number: 2060480)

MR MARK MILLIN, solicitor advocate, appeared on behalf of the General Pharmaceutical Council.

MISS JULIYA KONDRASOVA was not present and was not represented.

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

DETERMINATION OF THE COMMITTEE ON SANCTION

THE CHAIRMAN: Juliya Kondrasova has been a pharmacist since 2005, and she appears now to be 31 years old. At a hearing on 2 June 2011, which she did not attend, a Fitness to Practise Committee sitting as a Disciplinary Committee considered allegations of misconduct against her that involved the following:

1. In March of 2009 she had received a police caution for shoplifting from a department store in Birmingham when she stole goods to the value of £335, all of which were recovered.
2. She failed to report this caution to the Society (as it then was).
3. She received a further police caution in February 2010 in respect of two counts of attempting to obtain by deception. It seems that she had twice presented forged prescriptions for prescription drugs, being the painkiller Dihydrocodeine and the sleeping pill Zolpidem.

At the hearing the facts were found proved, and it appears to have been thought that there was considerable mitigation in Miss Kondrasova's personal circumstances with indications that she might have been suffering from post natal depression, and it is clear from the documents that we have seen that there was a weight of material to show that she was in serious financial and personal difficulties.

She was suspended for six months, and that suspension was treated as commencing on 5 July 2011 after the expiry of the time for appeal, and it would have expired at midnight last night, but a differently constituted Committee made an interim order yesterday effectively extending the period of suspension by one day to today. This is the review hearing that Miss Kondrasova was told would take place as the period of suspension came to an end, and at which this Committee has to decide what steps to take.

In the transcript at page 81 of our bundle Miss Kondrasova was expressly told that, at this hearing, the Committee might extend the suspension order or replace it with an order for conditions on her registration. In our earlier ruling today, we found that Miss Kondrasova was properly notified of today's date under the rules and we decided to continue with this hearing in her absence.

The first issue we have to address is that of jurisdiction, and Mr Millin has quite properly drawn this to our attention. The original suspension that was ordered by the Committee that heard the matter in June 2011 expired at midnight last night and, as I have indicated, a differently constituted Committee made an order under article 54 of the 200 order to maintain the continuity of suspension up to today. We are now concerned with article 52

which provides at article 52(4)(a) (ii) as follows:

"Where the Disciplinary Committee has given a direction under this article, other than a direction that the person concerned be removed from the register, following a review it may if it thinks fit -

(a) where the person concerned's registration is suspended, give a direction that -

(i) ...

(ii) the suspension be extended for such further period not exceeding 12 months as may be specified in the direction, starting from the time when the period of suspension would otherwise expire."

The issue that Mr Millin has drawn to our attention is that the language of that article, and in particular the words "would otherwise expire", shows that the intended structure is that the review should be held before the expiry of a suspension, but he argues that it is still open to us to make a direction for a further suspension even if the original suspension has expired, as it has in this case, by one day. He has referred us to the case of the GMC v KOR, which is a case on the GMC's interim order procedure, where it was held by Judge Pelling QC that an interim suspension could be extended if it had expired as long as the application for an extension has been made before the expiry, but it could not be extended

if the application was made after the expiry.

Mr Millin says that, by analogy, we should treat the notification of this hearing to Miss Kondrasova on 8 December 2011 as the application, and we should accordingly find that we have jurisdiction to make a further direction. We accept this argument. We consider that the wording of article 52 expressly gives us the power to give a direction for a further suspension at a review hearing (which this is) and it does not limit that power to suspend to cases where the suspension has not yet expired. We find that we have jurisdiction to apply the powers granted to us by article 52 of the 2007 order.

It follows that the context in which we are considering this review is that we are in complete ignorance of Miss Kondrasova's circumstances and, in particular, we do not know whether she wishes or intends to return to work as a pharmacist or, if she does, what steps she has taken to keep herself up to date with developments in pharmacy and with her professional education and development. We have also been informed that the Council has been recently notified by a letter dated 3 January 2012 that the police are investigating Miss Kondrasova again for fraud in connection with prescriptions. It may or may not turn out that there is any substance in this allegation, and we make no finding in respect of it, but it is a matter that we must bear in mind.

Miss Kondrasova was the subject of an interim order as from March 2010 before the six month suspension was imposed, and it follows that, she has not practised at least since March 2010, which is a period now approaching 22 months, and there is no information before the Committee as to whether Miss Kondrasova was practising when the interim

order was in fact made.

The sanction of the suspension was not imposed to punish Miss Kondrasova but to maintain standards in the profession and to maintain confidence in the profession in the circumstances of her misconduct. That aspect of the sanction is now spent, and if Miss Kondrasova had appeared before us and satisfied us that she had insight into the seriousness of what she had done and was professionally prepared to return to work or seek to return to work, and that she had kept up with study and courses relevant to a return to work, we would have made an order that permitted her to do so, unless there was further information in respect of the current investigation by the police that made that inappropriate.

As it is, we have a wide discretion under article 52(4) of the Pharmacists and Pharmacy Technicians Order of 2007. In our judgment, it is quite inappropriate, without knowing more about Miss Kondrasova and her current fitness to go back to work, to permit her to do so without restriction. She has to engage with the Council and explain her situation before she can return to work. The direction that we make is a further suspension of 12 months from yesterday, that is the date of the expiry of the original suspension, but we make it clear that the purpose of this further suspension is not to impose any further sanction but merely to enable the Committee to ensure that Miss Kondrasova is fit to return to practice before she does so, and to enable further inquiries to be made as to the current police investigation.

There will be a review at the end of this 12 month period, or at any earlier stage if Miss

Kondrasova requests it. At that review if Miss Kondrasova wishes to return to work, the Committee hearing the review will expect her to attend. It would be better if she was represented but, as a bare minimum, she will have to attend, and the Committee will expect to hear evidence from her with supporting documents as to her circumstances and particularly what steps she has taken and what work she has done to ensure that she is sufficiently up to date to return to practice. In the light of the evidence that was before the Committee last time, we would expect Miss Kondrasova at any review also to be able to reassure the Committee that there are no health issues that might interfere with her fitness to practise if she was to return to practice of pharmacy. We say nothing about the further police investigation other than to say that, if there is any substance to it, that will also have to be fully investigated by the Society.

The order we make then is a direction for a further suspension of 12 months from 4 January 2012, and we make an order revoking the interim order that the differently constituted Committee made yesterday. And since it is our judgment that the public interest demands that this further period of suspension should come into force immediately we accordingly make an order under Article 58 of the 2007 Order to the effect that Miss Kondrasova's registration is suspended with immediate effect pending the coming into force of the further suspension for 12 months.
