GENERAL PHARMACEUTICAL COUNCIL
FITNESS TO PRACTISE COMMITTEE
PRINCIPAL HEARING

25 Canada Square, London E14 5LQ

Thursday 13 June 2019

Chairman: Mr David Clark
Committee Members: Mrs Gazala Khan
Mrs Nalini Varma
Committee Secretary: Ms Zarina Ndemumana

CASE OF:

KAUR, Kiranbir
(Registration Number 2087565)

and

SHANU, Steven Tadiwa
(Registration Number 2087214)
(DAY THREE)

MR DAVID COLLINS, Counsel, instructed by Capsticks, Solicitors, appeared on behalf of the General Pharmaceutical Council

MS MELANIE WILLIAMSON, Counsel, appeared on behalf of Ms Kaur, who was present

MR MARTIN HADLEY of VHS Fletchers, Solicitors, appeared on behalf of Mr Shanu, who was present

Transcript from the Shorthand Notes of T A Reed (Wiltshire) Ltd
Tel No: 01793 764614
<table>
<thead>
<tr>
<th>INDEX</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Determination on Facts and Impairment</td>
<td>1</td>
</tr>
</tbody>
</table>

PLEASE NOTE: Copies printed from email may differ in formatting and/or page numbering from hard copies
DETERMINATION on FACTS and IMPAIRMENT

Introduction

1. Ms Kiranbir Kaur is a Pharmacist who was first registered with the General Pharmaceutical Council (“the Council”) on 15 August 2014. Her registration number is 2087565.

2. Mr Steven Tadiwa Shanu is a Pharmacist who was first registered with the Council on 1 August 2014. His registration number is 2087214.

3. It is alleged that the registrants’ fitness to practise as pharmacists is impaired by reason of misconduct. This hearing of the Council’s Fitness to Practise Committee has been convened to consider the allegations. The proceedings are governed by the provisions of the Pharmacy Order 2010 (“the Pharmacy Order”) and the General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010 (“the Fitness to Practise Rules”).

4. At the relevant time, the registrants were both enrolled on a Postgraduate Diploma course in Clinical Pharmacy at Keele University. In summary, it is alleged that Ms Kaur submitted a piece of course work which she had plagiarised from work done by Mr Shanu, and that Mr Shanu colluded in that act of plagiarism. It is further alleged that both registrants were dishonest by giving false accounts of their actions during an investigation by the University authorities.

5. The registrants attended the hearing. Ms Kaur was represented by Ms Melanie Williamson. Mr Shanu was represented by Mr Martin Hadley. The Council was represented by Mr David Collins.
The Particulars of Allegation

6. The Particulars of Allegation in relation to Ms Kaur are set out below:

"That you, a Registered Pharmacist:

1. First registered as a Pharmacist on 15 August 2014.

2. On or around 18 September 2016, submitted a Cardiovascular Disease 2 paper ("the Paper") to Keele University ("the University"), in circumstances where:
   a. you had reviewed an answer previously submitted by [Mr Shanu] ("the Answer"), and/or
   b. you used contents from the Answer in your preparation of the Paper; and/or
   c. you purported that the Paper was your own work.

3. Your actions in 2 above:
   a. breached Keele University ("the University") Regulation 8: General Regulations for University Examinations and Assessments;
   b. lacked integrity as you sought to misuse the Answer;
   c. was [sic] dishonest in that you knew that you had plagiarised from the Answer.

4. In or around December 2016, you made one or more false statements to the University in that you wrote "I can confirm I did not use, copy or obtain [Mr Shanu’s] work to complete my
assessment. The first time I saw [Mr Shanu’s] work was when it was sent to me from the academic misconduct team.”

5. Your actions in 4 above were dishonest in that you knew that you had reviewed the Answer before completing the Paper.

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

7. The Particulars of Allegation in relation to Mr Shanu are set out below:

"That you, a Registered Pharmacist:

1. First registered as a Pharmacist on 1 August 2014.

2. In or around 2016, you provided a copy of a Cardiovascular Disease 2 answer ("the Answer") to [Ms Kaur].

3. As a result of your actions stated in 2 above you:

a. breached Keele University ("the University") Regulation 8: General Regulations for University Examinations and Assessments;

b. lacked integrity as you were aware of the risk that [Ms Kaur] would misuse the Answer.

4. On [sic] or around October 2016, you provided one or more false statements to the University in that you stated that you did not share the Answer with [Ms Kaur].

5. Your actions in 4 above were dishonest in that you knew you had provided the Answer to [Ms Kaur].
By reason of the matters above, your fitness to practise is impaired by reason of misconduct.”

Admissions made by the registrants

8. Ms Williamson, on behalf of Ms Kaur, indicated that all of the factual allegations against her were admitted.

9. Mr Hadley, on behalf of Mr Shanu, indicated that all of the factual allegations against him were admitted.

10. The Committee was satisfied that the admissions were unequivocal and had been made with the benefit of legal advice. Therefore, the Committee found paragraphs 1-5 of the Particulars of Allegation in relation to each of the registrants proved on the basis of their admissions, in accordance with Rule 31(6) of the Fitness to Practise Rules.

11. Ms Williamson and Mr Hadley also indicated that the registrants accepted that their actions amounted to misconduct. They both denied that their fitness to practise is currently impaired. Whilst these are matters for the Committee’s judgement, and not issues which carry a burden or standard of proof, the Committee noted the registrants’ positions.

Evidence considered by the Committee

12. In advance of the hearing, the Committee was provided with the Council’s Hearing Bundle which contained statements and other documentary evidence from the following witnesses:

- Pauline Walsh, Pro-Vice Chancellor and Executive Dean to the Faculty of Medicine and Health Sciences, Keele University
• Alison Gifford, Postgraduate Programme Manager for the School of Pharmacy, Keele University
• Daxa Knowles, Programme Manager for the Clinical Pharmacy Postgraduate Course, Keele University.

The Council’s Hearing Bundle also contained a witness statement from Mr Shanu, responses to the Council from both registrants, and a copy of the relevant University Regulations.

13. The evidence of the witnesses was not in dispute between the parties, and none of the Council’s witnesses gave evidence before the Committee.

14. The Committee was also provided with evidence bundles from Ms Kaur and Mr Shanu. These bundles contained witness statements from the registrants, written reflections, references and testimonials, and evidence of continuing professional development.

15. The Council, Ms Kaur and Mr Shanu each provided the Committee with Skeleton Arguments setting out their respective cases.

16. Ms Kaur and Mr Shanu gave evidence before the Committee.

**Background**

17. The registrants met in 2009 when they studied pharmacy together as undergraduates and became friends. They both enrolled on the Postgraduate Diploma programme at Keele University. This is a distance learning course, where students are required to submit papers in relation to various topics. Mr Shanu submitted a paper for one of his subjects, Cardiovascular Disease 2, on 30 October 2015. By this time, both Mr Shanu and Ms Kaur were working at the same hospital, although in different roles.
18. In June 2016, Ms Kaur had been required to attend an Academic Misconduct Panel meeting at the University, and subsequently a Health and Conduct Committee hearing (which represents a higher level of disciplinary intervention), in relation to academic misconduct and poor academic practice. This resulted in her having to resubmit a piece of coursework and undertaking a six-month break from the course (from October 2016) “to enable you to reflect and focus on your life”.

19. At some point around September 2016, the registrants met at the hospital. Ms Kaur told Mr Shanu about her personal difficulties at the time. She told him that XXXXXXXXXXXXXXX (Redacted) and that, at the time, XXXXXXXXXXXXXXX (Redacted). There had been flood damage caused to the family home. She was struggling with her course and was not being supported by her tutor. She had not yet completed the Cardiovascular Disease 2 module, although this was an area in which she wanted to practise. As a result of their conversation, Mr Shanu gave Ms Kaur a copy of his answer to the Cardiovascular Disease 2 paper.

20. Ms Kaur submitted her answer paper on 18 September 2016. The software used within the University, Turnitin, identified a high level of similarity between Ms Kaur’s paper and the paper submitted previously by Mr Shanu. Ms Gifford, the Postgraduate Programme Manager, also noted that Ms Kaur appeared to have copied Mr Shanu’s references, including those which had become out of date.

21. The University Regulations define plagiarism as “the unacknowledged use by a student of someone else’s work being presented for assessment as if it were the student’s own”. The Regulations go on to explain the concept of collusion: “Students have responsibility for the security of their work, and for not allowing others to pass off their work as their own. A student
is guilty of collusion if he/she provides completed individual work to another student who then submits it, in whole or in part, as their own”.

22. On 18 October 2016, at Ms Gifford’s request, the Course Administrator contacted both registrants by email to inform them of the findings and of the fact that Ms Gifford was carrying out an investigation. Mr Shanu responded, and arrangements were made for him to be interviewed by Ms Gifford by Skype the following day. During that interview, he denied that he had provided a copy of his answer to Ms Kaur. In discussing how she may have come across his answer, he said that they may have used the same computer at the hospital at some point. Ms Gifford asked Mr Shanu to provide a written statement. He did so shortly afterwards, although the exact date is not known.

23. In his written statement, Mr Shanu said:

*Further to the skype interview on 19th October 2016, I follow on with a written statement.*

*I did not share my work with Kiranbir Kaur or anyone else. As discussed, we use a 'hot seat' office when at Sandwell site and I sometimes do my diploma work during lunch or after work…”*

24. Ms Kaur was asked to attend an Academic Misconduct Panel meeting on 20 December 2016. By this time, Mr Shanu had completed his course and had been awarded the Diploma.

25. In advance of the meeting on 20 December 2016, Ms Kaur provided the panel with a detailed written submission. Within that submission, she stated:
"I can confirm I did not use, copy or obtain Steven Shanu’s work to complete my assessment. The first time I saw Steven’s work was when it was sent to me from the academic misconduct team. I can see where the cause for concern has come from as there are areas which are similar to Steven’s but I can assure you I have not taken, copied or plagiarised his work."

26. In her document, Ms Kaur sought to explain how she had created the paper which she submitted, and she provided other documentation to support her position. She relied on her statement at the meeting, and the notes of the meeting confirm that she maintained that she had written the assignment herself. She told the panel that she had not used the computers at the hospital for her coursework. The panel found that plagiarism had taken place, and imposed a warning as the sanction.

27. In January 2017, the registrants were in contact by WhatsApp. It appears that Ms Kaur indicated to Mr Shanu that she intended to tell the University the truth about her actions. This would implicate Mr Shanu. He replied, in a message dated 31 January 2017, that he wanted to find out the “possible outcome on my side first”. Ms Kaur chased a response by way of a message on 28 February 2017, in which she said that she did not want to go further without speaking to him.

28. On 1 March 2017, Mr Shanu sent an email to Ms Gifford. He said:

"I wish to apologise and retract my previous statement regarding my work that was submitted by Kiranbir Kaur. The account I gave was not wholly accurate.

Kiranbir asked me to send her a copy of my assignment after giving me a story of how she was receiving no support from Keele, her tutor and a newly appointed tutor during the diploma. She stated that she was
XXX (Redacted), her house flooding, generally being unwell and getting married. I was naive to believe these stories and made a terrible judgement by sending my assignment to her so she could have some guidance. I did not anticipate that she would plagiarise my work and this was never my intention. I understand my responsibilities in allowing her to see it and accept the consequences. I apologise for not giving this account initially. I was shocked, angry and frustrated with myself for having been stupid and not seen that I was being manipulated by someone, when I thought all I was doing was providing a compassionate ear to a colleague who seem to be going through difficulties in life. I made a mistake and further confounded that through not controlling my emotions when it came to light what she had done. I understand I was in the wrong and need to take responsibility.

I sincerely apologise. Please let me know if you require me to come in for any further investigation.”

29. Mr Shanu attended a meeting at the University on 27 March 2017. He confirmed the change in his account. The University decided to take no action against him, but recommended that he notify his employer, which he did immediately. Following his attendance at the University, Mr Shanu sent a message to Ms Kaur to inform her of his actions. In the message, he said: "They’ve said it changes things for you in the sense that consequences won’t be as bad anymore because they’re not working under the assumption of theft. For me it’s bad cos it’s lie then retraction and dishonesty...”.

30. Following Mr Shanu’s email and attendance at the University, a further investigation was carried out by the University authorities. Ms Kaur was referred to the Health and Conduct Committee, the referral being based, in part, upon the dishonesty which had come to light. She was subsequently referred to the University’s Fitness to Practise Committee.
She agreed to make a self-referral to the Council, and provided evidence to the University that she had done so. Mr Shanu was also made the subject of an investigation by the Council, which gave rise to these proceedings.

**The evidence of the registrants**

31. In her written statement to the Council, Ms Kaur described the XXXXXXXXX (Redacted) she had been under at the time of the events and the impact this had had on her judgement. In her oral evidence, she explained the steps she had taken to manage her personal circumstances more effectively. She has regular contact with XXXXXXXXXXXXXXXX (Redacted). She continues to enjoy the support of her employer and she has line management responsibility for other members of staff. She has been open about these proceedings, and she uses her own experiences to inform her colleagues of the importance of maintaining professional standards at all times. She has taken steps to make herself a better person and has carried out charitable work regularly. She confirmed that she entered the pharmacy profession to help people and that she is passionate about her role.

32. In his evidence, Mr Shanu explained that he was motivated to help Ms Kaur because she was a friend in difficulty. He realises that his attempts to help were misguided. He did not know that Ms Kaur was going to misuse his paper in the way that she did, although he accepted that he recognised there was a risk it may be misused. He accepted that he had breached the University Regulations relating to collusion. When he learned that Ms Kaur had submitted a paper substantially based on his own, he was shocked and angry. This is why he did not tell the truth during the Skype interview on 19 October 2016. He said that he was still shocked when he came to write the email shortly afterwards. He accepted that he acted dishonestly. He admitted his actions to the University, even though
he knew that this would put him at risk of disciplinary action. He notified his employer and has been open with them about these proceedings. He has been able to advance in his career with the support of his senior managers, who have invested in his training and development, and he is now responsible for a team undertaking clinical trials. This is a responsible post which carries significant requirements in relation to quality and probity.

33. There were some discrepancies between the accounts of the two registrants. For example, Ms Kaur said that she either showed Mr Shanu the question she had to answer, or discussed it with him to the extent that he realised it was the same question he had answered previously. He did not accept this in his written evidence, but in his oral testimony before the Committee he did not seek to challenge it on the basis that he could not remember the exact events and, in any event, he admitted that he had acted wrongly. Similarly, Ms Kaur said that she discussed her forthcoming appearance before the Academic Misconduct Panel on 20 December 2016 with Mr Shanu prior to the meeting, and he had asked her not to implicate him. Mr Shanu did not accept this in his written account, but did not seek to challenge it at the hearing. The Committee took the view that there was no supporting evidence to indicate which version was the most likely to be correct. However, the Committee concluded that it did not greatly alter the position. It had never been suggested that Mr Shanu encouraged Ms Kaur to plagiarise his work or that he knew she would do so. His admission was on the basis that he recognised there was a risk of her misusing his paper in some way. Equally, with regard to any conversation between them prior to the meeting on 20 December 2016, even if Ms Kaur had been influenced by a desire to avoid implicating Mr Shanu, the case she presented at the meeting was aimed at securing her own exoneration.

The parties’ submissions on misconduct and impairment
Mr Collins, on behalf of the Council, invited the Committee to find that the registrants’ actions amounted to misconduct. He referred the Committee to the cases of *Cheatle v GMC* [2009] EWHC 645 (Admin) and *Roylance v GMC* [2000] 1 AC 311, and to the *Standards of conduct, ethics and performance* issued by the Council in July 2012 (“the Standards”). He submitted that the registrants’ actions breached various provisions in Standard 6, relating to honesty and trustworthiness. Mr Collins further submitted that the breaches were serious and that the registrants’ conduct fell far below what would be expected of registered pharmacists.

Mr Collins then addressed the Committee on current impairment. He referred the Committee to Rule 5(2) of the Fitness to Practise Rules (which is set out below at paragraph 59) and to the cases of *Cohen v GMC* [2008] EWHC 581 (Admin), *Yeong v GMC* [2009] EWHC 1923 (Admin) and *CHRE v NMC and Grant* [2011] EWHC 927 (Admin). He submitted that both registrants had brought the profession of pharmacy into disrepute; that they had breached a fundamental principle of the profession, namely the need to act honestly; and that they had shown that their integrity cannot be relied upon.

In relation to Ms Kaur, Mr Collins submitted that there was a risk of repetition. In support of that submission, he argued that Ms Kaur had demonstrated a pattern of dishonest behaviour over a significant period of time and that these attitudinal and behavioural traits are not easy to remEDIATE. Further, in her statement prior to the Academic Misconduct Panel meeting on 20 December 2016 and in her evidence to that panel, Ms Kaur had sought to reassure them that she was honest and trustworthy – as she has this Committee. This was found to be untrue, as
she later admitted to the University that she had plagiarised the paper and had lied about having done so.

37. Mr Collins suggested that Ms Kaur’s insight was not fully developed and he pointed to her inability, in her oral evidence, to explain what had been in her mind at the time she had acted dishonestly. He accepted that Ms Kaur had taken steps to remediate her misconduct, but she had not shown how she would act differently if confronted by a similar situation in the future. Her remediation, he argued, was insufficient to enable the Committee to be satisfied that the conduct would not be repeated.

38. Mr Collins concluded by inviting the Committee to find Ms Kaur’s fitness to practise to be impaired. Such a finding was, he said, necessary in order to uphold public confidence in the profession and proper standards. It would send a clear message that cheating and dishonestly seeking to conceal misconduct is wholly unacceptable for a registered professional. He submitted that her conduct was particularly serious because it undermines public confidence and trust in the qualifications and experience of pharmacy professionals.

39. In relation to Mr Shanu, Mr Collins also argued that there was a risk of repetition based on his lack of integrity in providing the Answer to Ms Kaur and subsequently lying to cover up his actions. This demonstrated significant attitudinal and behavioural concerns which were difficult to remediate. Mr Collins submitted that Mr Shanu had acted dishonestly in order to protect himself, that this was a particularly serious feature of the case, and that he had failed to show a sufficient level of insight and remediation to enable the Committee to be satisfied that the conduct would not be repeated. He submitted that a clear signal needed to be sent that a person who facilitates plagiarism and dishonestly seeks to cover up their actions is acting in a way which is unacceptable.
Ms Kaur

40. Ms Williamson confirmed that Ms Kaur accepted that her actions amounted to misconduct. With regard to current impairment, Ms Williamson reminded the Committee that it must consider the question of impairment as of the date of the hearing, not the date of the events. She submitted that a determination of misconduct, even in relation to dishonesty, did not necessarily lead to a finding of impairment. She invited the Committee to consider the context of the misconduct, the extent of Ms Kaur’s remediation, and the public interest.

41. The context of the misconduct included the (Redacted) and flood damage to the family home. She bore a disproportionate amount of the responsibility for caring for her parents. She was finding it difficult to concentrate on her studies, had fallen behind, and was not receiving an adequate level of support from her course tutors or her clinical co-ordinator. Ms Williamson suggested that the dishonesty should be viewed as one act, and that Ms Kaur behaved out of character due to her personal difficulties and a misplaced desire to avoid implicating Mr Shanu.

42. Ms Williamson submitted that, in her oral evidence, Ms Kaur had been “humble, remorseful and ashamed”. She had explained how she had developed strategies for dealing (Redacted). She has continued in employment and has a position of responsibility, which she has used to emphasise to colleagues the importance of upholding the standards of the profession. There has been no repetition of any unprofessional behaviour since the events. Ms Williamson took the Committee to the case of GMC v Choudhary [2017] EWHC 251 where Mr Justice Jay commented that: “dishonesty in an individual does not have to be an all-pervading or immutable trait. A person can be dishonest just on one occasion.” She submitted that Ms Kaur was not a dishonest person,
and she had demonstrated remediation of her misconduct so that the Committee could be satisfied there was no risk of repletion.

43. In relation to the public interest, Ms Williamson said that Ms Kaur fully appreciated the importance of upholding proper standards of conduct and behaviour in order to maintain public confidence in the profession. She pointed to the extensive disciplinary process undertaken by the University and the current proceedings before the Committee. She drew the Committee’s attention to the case of *PSA v NMC and SM* [2017] CISH 29, where the Court of Session upheld a decision of the NMC’s fitness to practise panel not to find impairment in a case involving admitted dishonesty in a clinical setting, where a nurse had sought to conceal a medication error. The Court considered there that professional standards and public confidence had been upheld by a rigorous regulatory process which had resulted in a finding of misconduct. Ms Williamson invited the Committee to make a similar finding in Ms Kaur’s case.

Mr Shanu

44. Mr Hadley similarly confirmed that Mr Shanu accepted that his actions amounted to misconduct. He submitted that Mr Shanu’s fitness to practise was not impaired. He argued that Mr Shanu had fully admitted the allegations against him, and had demonstrated good insight into his actions. The dishonesty had been an isolated incident. Mr Shanu is now responsible for a team undertaking clinical trials and has been entrusted with that role by his employer in full knowledge of these proceedings. That shows, Mr Hadley submitted, how much Mr Shanu has the confidence of his senior colleagues. It follows that the risk of repetition is low.

45. Mr Hadley further submitted that a finding of impairment based on the need to maintain public confidence in the profession was not required in Mr Shanu’s case. Mr Hadley referred the Committee to the case of *Royal
College of Veterinary Surgeons v Samuel [2014] UKPC 13, where the practitioner had received a suspended prison sentence following a neighbour dispute. The Privy Council, upholding an appeal against a finding of current impairment, emphasised the need to be wary of reaching a conclusion too readily as to the level of public opprobrium with which a particular course of conduct might be viewed. Mr Hadley invited the Committee to find that Mr Shanu’s fitness to practise is not currently impaired.

The Committee’s decision on misconduct and impairment

46. In making its decisions on misconduct and impairment, the Committee has borne in mind the over-arching objective of the Council. This is set out in Article 6(1) of the Order. The over-arching objective is the protection of the public. In its pursuit of that over-arching objective, the Council must pursue further objectives, as explained in Article 6(1A). These include:

(a) to protect, promote and maintain the health, safety and wellbeing of the public;
(b) to promote and maintain public confidence in the professions;
(c) to promote and maintain proper professional standards and conduct for members of the professions.

47. The Committee first considered whether the admitted facts amounted to misconduct. In doing so, the Committee took into consideration the observations of the Privy Council in Roylance, where Lord Clyde said: “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 of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [medical practitioner] in the particular circumstances”.
48. The Committee noted that both registrants accepted that their actions amounted to misconduct. The Committee agreed with Mr Collins’ submissions that the registrants had breached the Standards set out by the Council in July 2012. Standard 6 requires all pharmacy professionals to be honest and trustworthy, and to behave in a way that justifies the trust of patients and the public. In particular, the Committee considered that the registrants had breached the following parts of Standard 6:

6.1 Act with honesty and integrity to maintain public trust and confidence in your profession
6.5 Meet accepted standards of personal and professional behaviour
6.8 Respond honestly, openly and politely to complaints and criticism.

49. The Committee noted that the registrants had also breached the University Regulations, as referred to at paragraph 21 above. Further, the Committee considered that the registrants had breached the duty of candour set out in the October 2014 Joint Statement from the Chief Executives of statutory regulators of healthcare professionals. This is binding on all healthcare professionals, including pharmacists, and requires practitioners to be “open and honest with their colleagues, employers and relevant organisations, and take part in reviews and investigations when requested.”

50. The Committee bore in mind Rule 24(11) of the Fitness to Practise Rules, which provides that the Standards may be taken into consideration when considering the issue of impairment but that a breach of the Standards does not automatically result in a finding of impairment. The breaches of professional standards must be serious in order to cross the misconduct threshold.

51. In the case of Ms Kaur, the Committee identified the following aggravating factors which elevated the level of seriousness:
• The plagiarised paper related to the area of specialism which Ms Kaur intended to pursue. If her actions had not been detected, it is possible that she would have achieved the qualification, and then have gone on to practise in that area, without having the necessary skills and knowledge. This could have put patients at risk of harm.

• There were two distinct acts of dishonesty; submitting the paper and then lying about Mr Shanu’s involvement. The Committee did not agree with Ms Williamson’s analysis that it was one continuing act. Having submitted the paper, it would have been open to Ms Kaur to admit her wrongdoing when challenged. She chose a different course of action, and knowingly advanced a defence to the allegation at the hearing on 20 December 2016. Although her motivation may have been to avoid implicating Mr Shanu, she in fact put herself in a position where, if her account had been accepted, she would have been wrongly exonerated of any impropriety. This is a very different set of circumstances from the case of PSA v NMC and SM, where it was accepted that the nurse had acted impulsively when she realised that she had made an error, and fully admitted what she had done during the subsequent investigation.

• The dishonesty during the investigation demonstrated elements of planning and sophistication. Ms Kaur prepared a detailed statement with supporting documentation in advance of the hearing on 20 December 2016 to support her dishonest account.

• The submission of the paper represented a breach of trust, in that Mr Shanu had provided his paper in order to assist Ms Kaur. By her
actions, she compromised her own professional standards and also put Mr Shanu at risk.

52. The Committee identified the following mitigating factors, relevant to the circumstances of the conduct (as opposed to Ms Kaur’s subsequent steps to remediate):

- Ms Kaur’s difficult personal circumstances at the time, and the impact this had on her judgement.
- Her later admission to the University that she had misused Mr Shanu’s work.

53. Balancing those various factors, the Committee came to the conclusion that Ms Kaur’s actions were serious and amounted to misconduct.

54. In the case of Mr Shanu, the Committee identified the following aggravating factors:

- Mr Shanu confirmed the inaccurate account given during the Skype interview on 19 October 2016 in writing shortly after that interview. Whilst he maintained in oral evidence that he remained shocked by what Ms Kaur had done, this was nonetheless a deliberate act to perpetuate the original deceit.
- Mr Shanu’s actions made Ms Kaur’s position worse, in that she was suspected of academic theft in addition to plagiarism.

55. The Committee considered that Mr Shanu’s admission in his email of 1 March 2017 was a mitigating factor. Although it may have been prompted by Ms Kaur’s messages, it would have been open to Mr Shanu to maintain his denial and this would have left the University having to
decide which of Ms Kaur’s vastly different accounts was correct. It is quite possible that Mr Shanu would not have been implicated if he had continued to deny providing the answer to Ms Kaur.

However, despite that mitigating feature, the dishonesty in misleading the University authorities was serious and the Committee has concluded that it amounted to misconduct.

Having decided that the registrants’ actions amounted to misconduct, the Committee went on to consider whether, by reason of that misconduct, their fitness to practise is currently impaired.

The Committee noted the guidance given on the meaning of ‘fitness to practise’ in the Council’s publication Good decision-making (revised March 2017). At paragraph 2.11, the guidance 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 adhering to the principles of good practice set out in our various standards, guidance and advice.” In the Committee’s view, this case concerned the registrants’ character and behaviour.

The Committee also considered the criteria set out in Rule 5(2) of the Fitness to Practise Rules. These are very similar to the test put forward by Dame Janet Smith in her Fifth Shipman Report, which was cited with judicial approval by Mrs Justice Cox in Grant. Rule 5(2) states:

"In relation to evidence about the conduct or behaviour of the registrant which might cast doubt on whether the requirements 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.”

60. The Committee noted that Mr Collins based the Council’s case on impairment on the factors set out in paragraphs b, c and d.

61. The Committee has set out its conclusions on impairment separately in relation to each of the registrants.

Ms Kaur

62. As explained above, in the first bullet point in paragraph 51, the Committee did consider that, potentially, Ms Kaur put patients at risk of harm. However, the Committee noted that she had subsequently passed the Cardiovascular Disease paper and has been practising in that area without any concerns being raised about her clinical skills and knowledge. The Committee was not provided with any evidence to suggest that Ms Kaur posed a risk to patients. The Committee was satisfied that, having gone through a rigorous investigation process at the University and through her regulator, and having developed strategies to enable her to cope better with XXXXXXXXXXXXXXXXX (Redacted), there was no real risk of Ms Kaur acting inappropriately in the future in an academic setting.

63. The Committee found that Ms Kaur had brought the pharmacy profession into disrepute by her plagiarism and subsequent attempts to cover up her actions. Her behaviour could cause members of the public to question the
authenticity of pharmacists’ professional qualifications and this could undermine confidence in the profession.

64. The Committee gave very careful consideration to the question of whether Ms Kaur might bring the profession into disrepute in the future. The Committee was concerned that Ms Kaur had been the subject of an earlier internal University hearing in June 2016 which appeared to relate to the misuse of data. She then, within six months, committed an act of plagiarism and lied to the investigators about her actions. The Committee also took account of the submission made by Mr Collins that Ms Kaur seemed unable to explain why she had acted dishonestly, knowing as she did that this was contrary to her professional obligations.

65. In assessing the risk of repetition, the Committee accepted the principle referred to in *Choudhary* that a person who is not innately dishonest may, nonetheless, act dishonestly. The Committee also took into consideration the approach to assessing the risk of repetition explained by Mr Justice Silber in *Cohen*: is the conduct remediable; has it been remedied; is it highly unlikely to be repeated. Alongside this, the Committee noted that behavioural misconduct is more difficult to remediate than clinical errors (as explained in *Yeong*). The Committee bore in mind the difficult personal circumstances which Ms Kaur was facing at the time, and the steps she has taken to address those difficulties. The Committee also noted her willingness to engage with colleagues and to use her experience as a way of reinforcing to them the importance of professional standards. Although the Committee did feel that she had difficulty articulating her state of mind at the time, this does not in itself lead to a conclusion that she lacks insight and consequently presents an unacceptable risk of repetition.

66. Insight and remediation are important methods by which a registrant may demonstrate that the risk of their repeating previous misconduct is low, but the Committee has to consider all relevant factors in ascertaining the
extent of any risk. In this regard, the Committee reminded itself of the comments of Mr Justice Kerr in the case of *Kimmance v GMC* [2016] EWHC 1808 (Admin), when discussing insight and remediation, that: "I do not much like those jargon words. They do not do much to illuminate the reality, which is that a doctor or other professional who has done wrong has to look at his or her conduct with a self-critical eye, acknowledge fault, say sorry and convince a panel that there is real reason to believe he or she has learned a lesson from the experience." The Committee does not regard Mr Justice Kerr’s observations as setting out a test against which the risk of repetition should be judged, but it does demonstrate that a nuanced approach is required. The Committee concluded, in all the circumstances, that it is highly unlikely that Ms Kaur would act in a dishonest manner in the future, so as to bring the profession of pharmacy into disrepute.

67. The Committee next considered whether Ms Kaur had breached a fundamental principle of the profession. For the reasons set out above in relation to the finding of misconduct, the Committee determined that Ms Kaur acted in a manner which is contrary to the obligation to be honest and trustworthy. The Committee considers this to be a basic principle of professional practice as a pharmacist. The Committee was in no doubt that Ms Kaur has breached that principle.

68. Finally, in relation to Rule 5(2) of the Fitness to Practise Rules, the Committee considered whether Ms Kaur’s integrity could no longer be relied upon. It is undoubtedly the case that her actions have called her integrity into question. However, the Committee has already explained that it is highly unlikely that Ms Kaur will act in a dishonest manner in the future. Her remediation since the events, and in particular the responsible attitude she has shown towards her colleagues in using her own experience to educate them, demonstrates to the Committee that Ms Kaur has successfully re-established her integrity so that she can, in the future,
be relied upon to act in accordance with her professional obligations. Therefore the Committee does not consider that paragraph d of Rule 5(2) is engaged.

69. The Committee considered the observations made by Mrs Justice Cox in Grant where, at paragraph 74, she said: "In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession will be undermined if a finding of impairment were not made in the particular circumstances."

70. Based on its analysis of the Rule 5(2) factors, the Committee has decided that Ms Kaur does not present a risk to the public in her current role. However, her repeated dishonesty, her failure to act with appropriate candour in her dealings with the University authorities, and the elements of sophistication in the presentation of her defence at the hearing in December 2016 have led the Committee to conclude that her actions were of such a serious nature and raise such concerns about public confidence that a finding of current impairment is required in order to uphold proper professional standards and public confidence in the profession. The Committee is also of the view that this decision is consistent with the overarching objective of the Council, which includes the promotion and maintenance of public confidence in the pharmacy profession, and the promotion and maintenance of proper professional standards and conduct for members of the profession. A finding of no impairment in these circumstances would further undermine public confidence, and would send the wrong message to the profession about the importance of adherence to proper standards.
71. For these reasons, the Committee concluded that Ms Kaur’s fitness to practise as a pharmacist is currently impaired by reason of her misconduct.

Mr Shanu

72. The Committee carried out the same analysis in relation to Mr Shanu.

73. With regard to any actual or potential risk posed by Mr Shanu, the Committee noted that there has never been any concern raised about his own academic performance or his clinical skills and knowledge. The Committee did examine whether, in the light of the assistance he provided Ms Kaur in committing plagiarism, there was any risk that he might act such a way in the future. The Committee was satisfied that there is no real risk of this occurring. The Committee accepted that Mr Shanu was motivated purely by a wish to help Ms Kaur, a friend who was going through a particularly difficult time. The Committee further accepts that he did not know she would misuse his paper in the way that she did (although he did recognise there was a risk of her misusing the paper in some way, as evidenced by his admission to paragraph 3b of the Particulars of Allegation). The Committee concluded that any link between Mr Shanu’s actions and risk to patients was remote and, in any event, the Committee was satisfied that Mr Shanu recognises now that his actions were misguided and that the risk of any repetition is very low.

74. The Committee found that Mr Shanu brought the profession of pharmacy into disrepute by his actions in giving a false account in the Skype interview of 19 October 2016, and following that up shortly afterwards with an email confirmation of his account in which he falsely maintained his lack of involvement. This demonstrates a lack of candour in the investigation process and a willingness to place his own interests above the need to act in accordance with his professional obligations. The
Committee understands that he may well have been shocked and angry at the time of the Skype interview, and afterwards, but the written confirmation of his lack of involvement would have required a conscious decision on his part to confirm his false account. As explained earlier, the Committee sees this as an aggravating feature.

75. The Committee does not consider that there is any real likelihood of Mr Shanu acting in a dishonest manner in the future. He has continued to enjoy the support of his employer and is working now in a position of considerable responsibility. He has fully accepted his culpability in relation to these matters which, in his case, amounted to an isolated incident of dishonesty (albeit one which he perpetuated by maintaining it in his email). He decided to make a full confession to the University authorities about his actions and did so at a time when he could have remained silent. In making that confession, he reduced the level of culpability of Ms Kaur (because she was no longer suspected of academic theft) and put himself at risk of sanction.

76. For the reasons set out above, the Committee has concluded that Mr Shanu did breach a fundamental principle of the profession, in that he did not act with honesty and trustworthiness.

77. As with Ms Kaur, the Committee considered that concerns had been raised about Mr Shanu’s integrity. However, there is no evidence of repetition and Mr Shanu has done much to re-establish himself as a trustworthy member of the profession. The Committee has concluded that his integrity can be relied upon.

78. Based on its analysis of the Rule 5(2) factors, the Committee has decided that Mr Shanu does not present a risk to the public in his current role. However, his dishonesty to the University authorities and his lack of candour in concealing his own involvement in Ms Kaur’s plagiarism are
serious factors. The Committee considered the Court of Session decision in *PSA v NMC and SH*, and reminded itself that all cases are decided on their individual facts. Although there were some superficial similarities between the two cases, the element of impulsive action driven by panic, which was a feature in that case, is different in the case of Mr Shanu because he had time to reflect after the Skype interview but instead confirmed his false account in writing. In *SH*, the nurse was honest and candid when interviewed as part of the investigation process, whereas Mr Shanu did not admit to having given a false account until months after the event. The Committee concluded that Mr Shanu’s actions were sufficiently serious to require a finding of current impairment in order to uphold proper professional standards and public confidence in the profession. Again, the Committee had regard to the over-arching objective and concluded that a finding of impairment is necessary to ensure the effective promotion and maintenance of public confidence in the pharmacy profession, and the promotion and maintenance of proper professional standards and conduct for members of the profession. As in the case of Ms Kaur, a finding of no impairment in these circumstances would further undermine public confidence, and would send the wrong message to the profession about the importance of adherence to proper standards.

79. For these reasons, the Committee concluded that Mr Shanu’s fitness to practise as a pharmacist is currently impaired by reason of his misconduct.
Friday 14 June 2019

Chairman: Mr David Clark

Committee Members: Mrs Gazala Khan
Mrs Nalini Varma

Committee Secretary: Ms Kylie Ellway

CASE OF:

KAUR, Kiranbir
(Registration Number 2087565)

and

SHANU, Steven Tadiwa
(Registration Number 2087214)

(DAY FOUR)

DETERMINATION

-------------------------------------

MR DAVID COLLINS, Counsel, instructed by Capsticks, Solicitors, appeared on behalf of the General Pharmaceutical Council

MS MELANIE WILLIAMSON, Counsel, appeared on behalf of Ms Kaur, who was present

MR MARTIN HADLEY of VHS Fletchers, Solicitors, appeared on behalf of Mr Shanu, who was present

-------------------------------------

Transcript from the Shorthand Notes of T A Reed (Wiltshire) Ltd
Tel No: 01793 764614

-------------------------------------

I N D E X

Page

Determination on sanction 1
PLEASE NOTE: Copies printed from email may differ in formatting and/or page numbering from hard copies
The parties’ submissions on sanction

80. Before the Committee heard submissions from the parties on sanction, Ms Williamson indicated that Ms Kaur would like to address the Committee. Ms Kaur had prepared a document overnight which was based on her reflections in the light of the Committee’s determination. She again expressed her remorse for her actions, describing the events as occurring during a “shameful period” and stating that she is “appalled with my behaviour”. She acknowledged that she had brought shame onto herself, her family and her profession. She confirmed the steps she had taken to address her actions and to learn from her experience, and she apologised to the Council, to the Committee and to Mr Shanu for her actions.

81. Having heard from Ms Kaur, the Committee invited the parties to make submissions on sanction.

The Council

82. Mr Collins reminded the Committee that the purpose of sanction in regulatory proceedings is not to punish the registrant, although the consequences of a particular sanction may be punitive. The purpose of sanction is to protect the public and the public interest. Mr Collins drew the Committee’s attention to the sanctions guidance section in the Council’s *Good decision making* publication, in particular the sections on Dishonesty (paragraphs 6.8 to 6.10) and Duty of candour (paragraphs 6.11 to 6.13). Mr Collins referred to the Committee’s analysis of the aggravating and mitigating features set out in its impairment decision.

83. Mr Collins submitted that the dishonesty and lack of candour demonstrated by both registrants meant that taking no action or imposing a warning would be insufficient to maintain public confidence or to demonstrate to the profession the importance of adhering to proper standards of conduct and...
behaviour. He suggested that this was not a case where the imposition of conditions was appropriate; there were no areas of clinical practice which needed improvement, and in any event, conditions would be insufficient to address the public interest concerns. Mr Collins invited the Committee to impose a period of suspension in respect of Ms Kaur and Mr Shanu.

Ms Kaur

84. On behalf of Ms Kaur, Ms Williamson submitted that the Committee should see her actions in context. Her difficult personal circumstances were mitigating factors, and her insight and remediation indicated that she had learned from the experience. She submitted that Ms Kaur was ashamed of her actions and she recognised the damage she had caused to public confidence in the profession. She submitted that the sanction of suspension recommended by Mr Collins would be disproportionate. Ms Williamson invited the Committee to take no action, on the grounds that the action taken by the University, the lengthy regulatory process and the findings of misconduct and impairment were sufficient to mark the seriousness of Ms Kaur’s actions.

Mr Shanu

85. On behalf of Mr Shanu, Mr Hadley took the Committee through the sanctions guidance. He submitted that removal or suspension would be disproportionate given the level of remediation and insight shown by Mr Shanu. He suggested that conditions could provide a means by which the seriousness of the conduct could be reflected, although he was unable to identify any specific conditions which might address the public interest concerns. Mr Hadley submitted that, in all the circumstances, a warning would adequately mark the events and provide a sufficient degree of public acknowledgement.

**The Committee’s decision on sanction**

86. In considering sanction, the Committee recognised the need to act proportionately, in other words that the sanction should be no more serious than it needs to be to achieve its aims. The Committee was mindful that the purpose
of sanction in regulatory proceedings is not to punish registrants, although the effect of some sanctions may be punitive. The purpose of sanction is to protect patients and the wider public interest.

87. The Committee took account of the Council’s guidance on sanctions. It noted the specific guidance on dealing with cases involving dishonesty, and the damage dishonest acts can have upon the reputation of the profession. It also noted the guidance on the duty of candour, and in particular the fact that “registrants must be candid and honest when things go wrong.”

88. The Committee looked at the cases of Ms Kaur and Mr Shanu separately. The Committee noted that neither registrant had any previous findings against them by their regulator.

Ms Kaur

89. The Committee took into account the aggravating features it had identified earlier (see paragraph 51 above). The Committee also took account of the mitigating factors set out earlier in its determination relating to Ms Kaur’s personal circumstances at the time of the events and the fact that she did admit her actions to the University.

90. The Committee identified further mitigating factors which were relevant to its consideration of sanction:

- she has been open and honest since the event, and has used her experience to educate colleagues as to the importance of abiding by professional standards;
- her remorse and contrition are genuine and she has a good understanding of the impact of her actions on public confidence in the profession;
• her dishonest actions occurred during a period of particular difficulty in her personal life and she has taken steps to manage difficult situations more effectively;

• her references and testimonials indicate that she was a conscientious and able student, and that, before and after the events, there have been no concerns about her honesty and integrity. One reference, from a Deputy Sister, says that she has “learned and grown professionally from this situation” and that “As a professional, I still have full confidence in Kiranbir’s abilities as a pharmacist and I genuinely feel that she remains an asset to the Trust.” Another, from a Matron, refers to her as a “valued team-player who has thoroughly earned her employment as a pharmacist within the trust”.

91. The Committee approached the question of sanction by considering, in turn, each available sanction in ascending order of severity. The Committee first considered whether it should take no action. The guidance indicates that:

“[t]his may apply even when impairment is found, but there is no risk to the public or need for a sanction to be imposed.”

The Committee concluded that this was not appropriate in Ms Kaur’s case. Her dishonest acts related not only to the plagiarism of a piece of coursework, but also to her efforts to cover up what she had done. The Committee accepts that this may have been motivated by a desire to avoid implicating Mr Shanu, but her actions in providing a false statement to the Academic Misconduct Panel showed elements of planning and sophistication, as mentioned previously. Her significant efforts to remediate her misconduct do not detract from the seriousness of her actions, and that level of seriousness would not be adequately marked by the imposition of no regulatory sanction.

92. The Committee next considered whether a warning would be a proportionate sanction. The guidance states that a warning may be appropriate where:
“There is a need to demonstrate to a registrant, and more widely to the profession and the public, that the conduct or behaviour fell below acceptable standards.

There is no need to take action to restrict a registrant’s right to practise, there is no continuing risk to patients or the public and when there needs to be public acknowledgement that the conduct was unacceptable.”

93. The question for the Committee was whether a warning would be sufficient to demonstrate that Ms Kaur’s conduct fell below acceptable standards and to acknowledge publicly that her conduct was unacceptable. In order to answer that question, the Committee considered the context in which the dishonesty occurred. Although it was not a single, brief, isolated incident, it did take place during a discrete time period when Ms Kaur’s judgement appears to have been affected by her personal difficulties.

94. The Committee has been careful not to allow its sympathy for Ms Kaur’s position to influence its decision; the public is entitled to expect the highest standards from healthcare professionals at all times. However, in assessing the seriousness of the dishonesty, the public perception of that dishonesty, and the proportionate steps needed to address the Committee’s public interest concerns, the Committee bore in mind that an informed member of the public would recognise that Ms Kaur had acted out of character. Her true character, and a more accurate means of gauging her professional integrity, can be gained from observing her conduct before and after these events.

95. The Committee’s preliminary conclusion was that a warning would be sufficient to address its concerns regarding the need to maintain public confidence and to declare and uphold proper professional standards. In order to test that conclusion, and to assess again the sufficiency of a warning as the appropriate sanction, the Committee examined further sanctions options. The Committee agreed that the imposition of conditions was not a practical option in Ms Kaur’s case. There was no evidence of poor performance or shortcomings in
her practice. The Committee considered suspension. It noted that suspension may be appropriate where:

“The Committee considers that a warning or conditions are insufficient to deal with any risk to patient safety or to protect the public, or would undermine public confidence. It may be required when necessary to highlight to the profession and the public that the conduct of the registrant is unacceptable and unbefitting a member of the pharmacy profession. Also when public confidence in the profession demands no lesser sanction.”

96. The Committee considered that Ms Kaur’s actions were unacceptable and unbefitting a member of the pharmacy profession. However, the guidance indicates that suspension may be required where this is necessary to highlight the nature of the conduct. The Committee was reinforced in its preliminary view that a warning would provide a sufficient means of marking Ms Kaur’s conduct when the context was properly considered and when the relevant aggravating and mitigating factors were balanced. In the light of that conclusion, the Committee decided that a sanction of suspension would be disproportionate.

97. Therefore the Committee concluded in Ms Kaur’s case that a warning was the appropriate sanction. The warning is in the following terms:

“The Committee hereby issues a formal warning to Ms Kiranbir Kaur, a Pharmacist, that she should ensure that she consistently complies with the requirement to act with honesty and candour. The Committee reminds Ms Kaur that, if events in her personal life begin to impact on her ability to meet the high standards of conduct and behaviour required of her, she should notify her line manager and, if necessary, take steps to limit or cease her practice.”

Mr Shanu
98. The Committee took into account the aggravating features it had identified earlier (see paragraph 54 above). The Committee also took account the following mitigating factors which were relevant to its consideration of sanction:

- Mr Shanu did approach the University and admit his actions. There was a significant delay before he did so, but when he did it was in circumstances which were likely to be detrimental to him and beneficial to Ms Kaur;

- he has been open and honest since the event towards his employer and in these proceedings. He has been supported by his employer and has been promoted to a position of responsibility in an area of pharmacy practice which requires particularly high levels of probity;

- he has expressed genuine remorse and contrition;

- his actions in providing Ms Kaur with the paper were motivated by a desire to help her at a time when she was facing difficulties in her personal life and with her course;

- his testimonials show that his actions were wholly out of character. One reference says that “early on in his career, he was recognised and respected as a brilliant pharmacist”. He received the Royal Pharmaceutical Society award for the Best Student on the MPharm Degree Programme in 2013. Since the events, his current line manager (who is the Deputy Chief Pharmacist) refers to him as a “role model for all pharmacists, displaying excellent leadership skills” and she comments that she has “every confidence in him”. The Chief Pharmacist refers to him being a “trusted member of the Research and Development Committee” and being entrusted with an ambassadorial role. He has agreed to fund a further MSc level qualification for Mr Shanu, which he says demonstrates his support for the registrant.
99. The Committee first considered whether it should take no action in respect of Mr Shanu. The guidance is set out above in paragraph 91, but it is repeated here:

“This may apply even when impairment is found, but there is no risk to the public or need for a sanction to be imposed.”

100. Mr Shanu has gone through a rigorous examination of his actions and his character through this regulatory process. He accepted that he had acted dishonestly. Since these events, he has successfully rebuilt the trust of his senior colleagues as demonstrated by his promotion at work and their testimonials. The Committee was satisfied that an informed member of the public would rightly be critical of Mr Shanu’s actions, but would appreciate that his culpability had to be seen in context. When viewed against the aggravating and mitigating factors, the Committee concluded that the informed member of the public would not consider it necessary, in these circumstances, for there to be a formal acknowledgement that the conduct was unacceptable by way of a warning. The Committee was also satisfied that, because of the difference in their levels of culpability, the disparity in outcome between Ms Kaur and Mr Shanu was proportionate.

101. Therefore the Committee has concluded that it is not necessary for any further action to be taken against Mr Shanu.

102. These proceedings are now concluded. Ms Kaur and Mr Shanu have accepted responsibility for their actions and the Committee has decided the case accordingly, having borne in mind the over-arching objective of the Council. The Committee believes that both Ms Kaur and Mr Shanu have much to offer the pharmacy profession and the communities they are passionate about serving. The Committee wishes them well for the future.

--------------
Day 1-8