

Order amended pursuant to CPR 40.12 by the Honourable Mrs Justice Lang
February 2024



Approved on 16 January 2024 by: *Mrs Justice Lang*

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
BETWEEN:

AC-2023-LON-003531
AC-2023-LON-003531

THE PROFESSIONAL STANDARDS AUTHORITY
FOR HEALTH AND SOCIAL CARE

Appellant

- and -

(1) GENERAL PHARMACEUTICAL COUNCIL
(2) ISMAIL ESSOP NAGDI

Respondents

ORDER BY CONSENT

UPON the Appellant and First and Second Respondents having agreed to the terms of this Order, in particular that it is just and convenient for the Court to make the Order set out below

AND UPON no party being a child or protected party and the appeal not being an appeal from a decision of the Court of Protection

AND UPON the Second Respondent being a Pharmacist on the register established and maintained by the First Respondent

AND UPON the First Respondent's Fitness to Practise Committee ("the Committee") having heard allegations that the fitness to practise of the Second Respondent was impaired by reason of his conviction ("the proceedings")

AND UPON the Committee, at a hearing held between 10 October 2022 and 23 September 2023, having imposed an order that the fitness to practise of the Second Respondent was impaired by reason of his conviction and that his registration as a pharmacist be suspended for four months ('the decision')

AND UPON the Appellant having lodged an appeal on 27 November 2023 against the decision pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002 (as amended)

AND UPON the First Respondent conceding that the appeal should be allowed on the basis of the reasons set out in schedule 1

AND UPON the Second Respondent having no objection to the appeal being allowed on this basis

IT IS ORDERED THAT:-

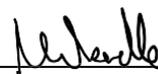
1. The appeal is allowed.
2. The decision is quashed and an order of suspension for 6 months with a review to take place before expiry is substituted. The order is to be deemed as having taken effect on 24 October 2023 and must therefore be reviewed before its expiry at 23:59 on 23 ~~May~~ **April** 2024. In conducting the review the Committee must have regard to the matters set out in schedule 2 to this order.
3. The First Respondent is to pay the Appellant's reasonable costs of the appeal, to be assessed if not agreed.



For the Appellant



For the First Respondent



For the Second Respondent

Dated: 16 January 2024

Schedule 1 – statement of reasons

1. The findings and penalty imposed by the Committee were insufficient to protect the public and were wrong and/or arrived at following serious procedural irregularities within the meaning of CPR 52.21(3), for the following reasons.

Ground 1b: the Committee erred by failing to have adequate regard to the Second Respondent's maintenance of his innocence in the face of a conviction which it was not open to the Committee to go behind

2. The Committee originally found that Mr Nagdi's integrity could no longer be relied upon.

A procedural unfairness point was raised; the procedural approach then adopted by the Committee resulted in the removal of the findings and reasons in relation to integrity and reliance only upon his conduct bringing the profession into disrepute and breaching one of the fundamental tenets of the profession as grounds for impairment. That narrowing of focus resulted in the Committee failing to consider whether there were any deficiencies in Mr Nagdi's insight which would have been significant when assessing the necessary and proportionate sanction. Whether or not Mr Nagdi's lacked insight was highly material to the issue of public confidence in the profession and therefore to the level of sanction required. The failure to fully assess and give reasons on the issue of whether or not his integrity was capable of being relied upon amounts to a serious procedural irregularity.

Ground 2b: The Committee erred by failing to have adequate regard to the Second Respondent's maintenance of innocence when considering whether he posed an actual or potential risk to patients and the public and whether his integrity could no longer be relied upon

3. The Committee's approach identified in 2 above led to a further serious procedural irregularity. Conviction for dishonesty offences shows: i) that the registrant may present a risk to patients or the public (in the event of repeated dishonest conduct) and ii) that the integrity of the registrant can no longer be relied upon: they have failed

to adhere to the high standards expected of a professional person. Conviction for a dishonesty offence, combined with any identified lack of insight and/ or continued denial, may give rise to a real concern about future risk to patients and the public. The Committee's failure to sufficiently consider whether the Second Respondent's integrity could no longer be relied upon and/or to give reasons for their determination led to an inadequate assessment of risk amounting to serious procedural irregularity.

4. Lack of integrity has a significant, adverse impact upon the reputation of the pharmaceutical profession, and upon public trust and confidence in the profession. By abandoning the finding of impairment relating to lack of integrity and proceeding on a narrow basis, the Committee failed to have proper regard to the factors relevant to the sanction required to protect the public and to properly restore public confidence and uphold standards and as a result the sanction ultimately imposed was insufficient.

Ground 3: The Committee erred by failing to take into account aggravating factors

5. The Committee failed to take into account the following:
 - (i) Whether the Second Respondent refused to accept his dishonesty and/or lacked insight into his dishonesty
 - (ii) The amount of money involved.
 - (iii) The fact that the fraud would have continued, but for the victims' discovery of the fraud.

And in so failing, this amounted to a serious procedural irregularity which means that the ultimate sanction imposed was insufficient.

Schedule 2– directions

1. In conducting the review of the order of suspension prior to its expiry on 23 ~~May~~ **April** 2024 the Fitness to Practise Committee must consider, and give reasons for its determination, the following issues:
 - (i) The extent to which the Second Respondent's fitness to practise remains impaired having regard to the matters contained within Rule 5(2). For the avoidance of any doubt, this must include in relation to whether Rule 5(2)(d) is engaged.
 - (ii) The level of insight shown by the Second Respondent having particular regard to the extent and impact of any continued denial of dishonesty before the reviewing Committee.
 - (iii) The level of risk or harm posed by the registrant in light of: the conviction for dishonesty, any previous or continued denial and any findings made in relation to the engagement of Rule 5(2)(d).
 - (iv) Any aggravating or mitigating factors (including those identified in schedule 1 above).

2. The General Pharmaceutical Council is to place before the reviewing Committee:
 - a. a copy of this consent order and attached schedules;
 - b. transcripts of the evidence given by the registrant and submissions made on his behalf at the principal hearing.