

**ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN**

**DISCIPLINARY COMMITTEE**

1 Lambeth High Street  
London SE1 7JN

Thursday 20 May 2010

Chairman – Mr Patrick Milmo QC

Committee Members

Mr Edward Mallinson  
Ms Judith Way

Case of:

**ABID HUSSAIN (85619)**

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

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MS LISA DAVIS, Solicitor, appeared on behalf of the Society.

MS SANDHYA KAPILA of NPA appeared on behalf of Mr Hussain, who was present.

**T A REED & CO LTD**

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DETERMINATION ON SANCTION

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THE CHAIRMAN: The allegations against the registrant, Mr Abid Hussain, concern the sale of large numbers of bottles of codeine linctus in the quantity of 200 ml to customers visiting his pharmacy in Harnall Lane East, Coventry. Codeine linctus is not a controlled or  
B prescription only medicine, but, like any medicine containing codeine, it can be potentially addictive.

B

This practice of Mr Hussain, which I have generally just described, came to the attention of the Society when one of its inspectors, acting on information, visited Mr Hussain's pharmacy on 31 December 2008 and asked the counter assistant if the pharmacy sold codeine linctus.  
C Her response was to inquire whether Mr Waugh wanted it sugar-free. He said he did not care. The counter assistant said she would have to ask the pharmacist, who was in the dispensing area and not visible. A male voice – and we are entitled to assume that it was the  
D voice of Mr Hussain – said “Yes.” The assistant then emerged with ten bottles of codeine linctus, for which Mr Waugh paid £27.50. The pharmacist never emerged from the dispensary, never saw the customer and never asked the customer why that quantity of codeine linctus was required.

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This experience led to investigations and an interview took place a few weeks later with Mr Hussain. The interview was conducted by another inspector of the Society on 23 February 2009. In the course of that interview, Mr Hussain admitted supplying several bottles of codeine linctus per week to four or five regular customers and that he had been doing this since 2006. He said he knew that codeine linctus was addictive and that the three to five  
F customers who were regular purchasers of this medicine were addicts of this medicine.

F

There followed inquiries of the wholesalers who supplied Mr Hussain's pharmacy and they revealed that between January 2007 and December 2008 the pharmacy had purchased no less  
G than 5,771 bottles of 200 ml codeine linctus.

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Before this Committee, Mr Hussain has admitted the allegations contained in the particulars of allegation and he has also admitted that his fitness to practise is impaired. Our task is therefore to determine what is the appropriate sanction.

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A We should always remind ourselves of what the purpose of sanctions is. They are three-fold: firstly, the protection of the public; secondly, the maintenance of public confidence in the profession and, thirdly, the maintenance of proper standards. In our view, all three of those purposes are engaged in this case. We state, as is well-known, that the purpose of sanctions is not to punish the registrant, although sanctions may be punitive in their effect.

B It should be mentioned in this context that Mr Hussain has been the subject of an interim suspension order, which it was suggested by Ms Kapila appearing on behalf of Mr Hussain was a form of punishment that Mr Hussain had already endured. We should reiterate that an interim order of suspension is only made when it is considered necessary for the protection of the public or is otherwise in the public interest. It is not a punitive order.

C In deciding the appropriate sanction, we are exercising a discretion. That discretion must be exercised in a fair and reasonable way and one that ensures that any sanction is proportionate. The term “proportionate” has been explained in this context in a case called *Chaudhury v. The General Medical Council*, which was decided in 2002, in which it was said:

“The application of the doctrine of proportionality is to ensure that a measure imposes no greater restriction upon a Convention right ...”

E and I interpose to say that the right to practise a profession is a Convention right –

“ ... than is absolutely necessary to achieve its objectives.”

F In considering sanctions, we must consider whether there have been aggravating features or mitigating features relating to the misconduct. It has to be said that there are a considerable number of aggravating features.

G There were vulnerable victims, namely, addicts, whose addiction Mr Hussain by his conduct was feeding or fuelling. The misconduct occurred and was repeated over a substantial period of time, which it would seem was in excess of two years. What he was doing was potentially harmful to the customers and no steps were taken to prevent such harm. In the course of his interview, he said that he advised the addicted customers that they should reduce their intake, but he did not seem to have reduced the amounts that he was prepared to sell those addicts.

A

His conduct was quite deliberate and it must be regarded as an abuse of his position as a pharmacist. Furthermore, Mr Hussain acted in blatant disregard of standards and guidance published by the Society. We refer to a section of Part 3 of the Code of Ethics which is entitled "Sales of Pharmacy Medicines". The last sentence of 10 (e) is in these terms:

B

"Pharmacists and their staff must be aware of the abuse potential of certain over the counter products and should not supply where there are reasonable grounds for suspecting misuse."

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Practice guidance has been issued relating to substances liable to misuse and there is a reference to any medicine containing codeine.

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One subheading in the list of aggravating features is that of insight. In relation to this, there has been a somewhat conflicting difference of approach between the Society advocate and the advocate appearing on behalf of Mr Hussain. Ms Davis has said that there was a lack of insight; Ms Kapila has said that there was a considerable degree of insight.

E

In our view, Mr Hussain did have insight, but in the sense that he knew what he was doing was wrong, but nonetheless systematically and continuously persisted in the practice. That form of insight, it has to be said, is not insight which operates in Mr Hussain's favour. Indeed, it might be regarded as an aggravating feature.

F

What is certainly an aggravating feature is Mr Hussain's motives. There were straightforward commercial reasons for supplying addicts and others with this quantity of codeine. The words he used when interviewed as to what his explanation was were that he was "building up his practice". Putting it another way, his attitude appeared to be that this was a profitable exercise and he was not going to stop it, even though it might be causing harm.

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Finally, in the list of aggravating features, the misconduct was committed by Mr Hussain as the person in charge of the material pharmacy premises.

H

A As for mitigating features, it is right that Mr Hussain did stop this practice in or shortly after February 2009, but he stopped only when he had been found out and there are grounds for suspecting that if the Society Inspector had not called on the pharmacy on 31 December 2008, the practice of supplying bulk quantities of codeine linctus would have continued uninterrupted on the same scale.

B On the other hand, it is in favour of Mr Hussain that he has made admissions to this Committee and he has recognised that his fitness to practise is impaired. That may indicate that he now realises how serious his misconduct was and that can be regarded as a measure of insight.

C We must have regard to Mr Hussain's personal circumstances. He has a wife and four children to support and also an elderly dependent relative. He has already suffered financial loss as a result of the interim suspension order. That probably is mostly attributable to the cost of hiring a superintendent pharmacist to take his place during the currency of his suspension, but he does own the pharmacy and can enjoy such profits as it generates.

D Mr Hussain has put in front of the Committee a statement which is to be found on pages 25 and 26 of the small bundle of documents. In that statement, he has spoken of his remorse at what he has done and his feelings of guilt and shame. In paragraph 14, he states:

E "I have had a long time to reflect on how badly I have behaved. I will certainly never allow such a situation to arise again nor will I veer from the high standard of conduct and ethics expected from a pharmacist."

F We have read this statement and taken it into account, albeit that Mr Hussain did not give evidence to the Committee under oath and was not questioned either by the Society or by this Committee.

G A number of testimonials have been put before us. They are principally from friends and acquaintances, both professional and social, and some employees. The impression obtained is that Mr Hussain is well-liked in the community and some are impressed by the service that he has provided to the local community through his pharmacy.

H

A It has to be mentioned, however, that any favourable impression conveyed by the testimonials is somewhat lessened by the inclusion of letters from persons who were working in the pharmacy recently, one of whom was very likely to have been the counter assistant who provided the Society Inspector, Mr Waugh, with ten bottles of codeine linctus, and all of whom must have had knowledge of the bulk sales of codeine linctus at some time during the period 2007/2008, because two of the assistants were working throughout that period and one for a number of months towards the end of that period. So when we in read a letter from one of those assistants these words:

C “He has always maintained the well being of the customers and staff, making sure customers received appropriate medication ...”

we do wonder how that should be understood.

D We return to consider the three-fold purpose of sanctions. First of all, the protection of the public. Ms Kapila in a forceful submission on behalf of Mr Hussain has emphasised that the fact of supplying codeine linctus in vast quantities was immediately stopped in or about February 2009 and that on those grounds we can eliminate any further need for the protection of the public. In our view, that shows rather a narrow approach to the problem, because on our assessment, Mr Hussain, by his conduct, has demonstrated that he is capable of flouting guidance instructions issued by the Society and acting with worrying irresponsibility so far as patients and the public are concerned. We cannot be assured that repetition of similar conduct with some other medicines will not occur in future.

F As regards maintenance of public confidence in the profession, public confidence must have been reduced or damaged by knowledge that a pharmacist was supplying large quantities of addictive drugs to anyone who asked for them, including known addicts. Drug addiction is a major social problem nowadays, the cause of much crime and social deprivation. The public must expect that the pharmacy profession will do all in its power to ensure that addictive medicines are not irresponsibly distributed to anyone who asked for them.

H As regards the maintenance of proper standards within the profession, it has to be generally recognised within the profession that conduct of the kind committed by Mr Hussain is wholly unacceptable.

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There are four categories of sanctions that can be directed and we are required to consider them in ascending order of gravity.

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First of all, there is the issue of a warning. Ms Kapila has, it must be said with boldness, suggested that that would be sufficient in this case. The *Indicative Sanctions Guidance* states that a warning may be appropriate where there is no continued risk to patients or the public.

C

That in our view does not apply in this particular instance. And a warning may be the right sanction where there are minor breaches of guidance issued by the Society. What Mr Hussain did in this case does not warrant the description “minor”. In our view, none of the threefold purposes of sanction would be achieved by the issue of a warning.

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One level up is the direction that conditions should be imposed upon the continued registration of the registrant. In our view, this form of sanction is appropriate where there has been a deficiency in performance which can be remedied in time by training and supervision. We are not in that area of misconduct. Here, we are confronted by a deliberate act of misconduct for commercial motives.

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The top level of sanction is suspension or removal. As regards suspension, Mr Hussain has already been under an interim suspension order, but what we find inappropriate in such a direction is that the period of suspension is only 12 months, albeit that it can be reviewed. In our view, 12 months’ suspension would not sufficiently satisfy the three-fold purpose.

F

Unhappily, we are compelled to the view that the sanction we must impose in this case is removal from the register. The practice carried on for more than two years of selling large quantities of a potentially addictive medicine to addicts and anyone who asked for it, for no other reason than commercial profit, was nothing short of disgraceful. Such behaviour is fundamentally incompatible with registration and public confidence in the profession

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demands no lesser sanction than a direction that his name should be removed from the reegister and that is the sanction we impose in this case.

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MS DAVIS: Sir, there is one final matter arising out of that. The Society seeks interim measures in this case. This is a matter whereby the Committee has made a determination that you are not assured that there will be no further repetition in respect of public protection and, furthermore, that the public interest continues to be damaged by the fact that the pharmacist was in fact feeding addictions.

A In those circumstances, as well as the fact that there was an interim order in place, primarily for those precise reasons, the Society would ask that the direction you have made comes into effect immediately.

THE CHAIRMAN: Have you anything to say on that, Ms Kapila?

MS KAPILA: No, sir, I have not.

B THE CHAIRMAN: In which case, we will make an order under article 58. We do so because we consider that it is necessary for the protection of members of the public or is otherwise in the public interest.

The order that we make is that Mr Hussain's registration shall be suspended forthwith, pending the coming into force of the direction that his name be removed from the register.

C MS DAVIS: Thank you, sir.

THE CHAIRMAN: That concludes the case.

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