

THE ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN

DISCIPLINARY COMMITTEE

Tuesday 9 March 2010

Chairman – His Honour John Samuels QC

Panel Members:

Mr Peter Jones (Professional)
Mrs Joy Tweed (Lay)

Case of

Mr Subhashchandra Kantilal MEHTA (72569)

DAY 2

Mrs Lisa Davis appeared on behalf of the Royal Pharmaceutical Society.

Mr Mehta was present, but was not represented.

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

INDEX

	<u>Page</u>
Submission by Mr Mehta	1
DETERMINATION AS TO SANCTION	2

PLEASE NOTE: Copies made from hard copy transcript and those printed from e-mail version may differ in formatting and/or page numbering

A

Tuesday 9 March 2010

Proceedings commenced at 9:30

THE CHAIRMAN: Good morning. Mrs Davis, I don't think there is anything more that you wish to say in relation to sanctions, is there?

B

MRS DAVIS: No.

THE CHAIRMAN: Mr Mehta, this is your opportunity to address us in relation to whether any, and if so what, sanction should be imposed by the Committee. You are also entitled to put anything before us that you wish us to take into consideration by way of references or to call any witnesses to speak on your behalf.

C

MR MEHTA: Good morning, everyone. I did give one copy of a reference.

THE CHAIRMAN: Is this the document relating to the previous proceedings before the Statutory Committee or is it something else?

D

MR MEHTA: It is something else. (Pause whilst document is read by the Committee)

THE CHAIRMAN: That is helpful, thank you very much. This confirms as you told us yesterday that the Confiscation Order was paid pursuant to the court's direction in January 2009.

E

MR MEHTA: Yes.

THE CHAIRMAN: Thank you very much. Does this document come from you or from Mrs Davis?

F

MRS DAVIS: It came from Mr Mehta.

THE CHAIRMAN: It can go back to Mr Mehta. It is merely documentary confirmation that the Confiscation Order was paid. What would you like to say to us, Mr Mehta; we have read the reference from Mr Savjani?

G

MR MEHTA: I would like to apologise for bringing the profession into disrepute and I apologise to everyone for my behaviour.

THE CHAIRMAN: Is there anything else that you wish to add?

H

MR MEHTA: On the mitigating features No. 7 there is an open and frank admission

A | at an early stage demonstrating insight into misconduct. I would like to say that I followed the advice of my QC to enter a plea of guilty prior to the first hearing and that is all.

B | THE CHAIRMAN: Very well. Thank you very much. If I may say so, Mr Mehta, your conduct before this Committee has always been impeccable.

MR MEHTA: Thank you, sir.

C | THE CHAIRMAN: Thank you very much. We will now retire and consider our determination in the light of everything that we have heard.

(The Committee went into camera at 9:38 until 9:50)

DETERMINATION AS TO SANCTION

D | THE CHAIRMAN: This Committee does not repeat its determination in respect of the facts which it found proved yesterday afternoon in relation to allegations relating to an incident in May 2004, which for shorthand purposes we shall describe as the misconduct allegation. Once we had reached that determination Mrs Davis on behalf of the Society drew our attention to a subsisting conviction of this Registrant on 8 December 2008 at Southwark Crown Court. That conviction related to 14 counts of false accounting involving a loss to the National Health Service of some £45,000 to which the Registrant had pleaded guilty. On 19 January 2009 he was sentenced to 12 months' immediate imprisonment and a Confiscation Order in the sum of £45,000 was made against him with a default term of 12 months' imprisonment consecutive. We have seen documentary evidence today to confirm that the confiscation order was satisfied within the time-frame permitted by the Crown Court.

F | On hearing of the subsisting conviction the Committee reached the conclusion that the fitness to practise of this Registrant is impaired, a proposition which, through his solicitors, he has always recognised. On 23 February 2009, his former solicitors wrote to the Society in the following terms:

G | "We confirm that Mr Mehta has instructed us he will not be opposing the above proceedings and does not intend to attend the hearing. He has attempted to resign from the Society, but of course because disciplinary proceedings were pending was not able to do so.

H | As far as Mr Mehta is concerned the proceedings can be disposed of in the most efficient way possible. He does not require any witnesses to attend and will not be

A opposing or entering any appearance in relation to the proceedings involving the supply of Cytotec tablets."

B In fact that letter was not a complete and accurate picture of that which Mr Mehta wished his solicitors to place before the Society, and when he ultimately appeared as he did before this Committee separately and differently constituted on 14 August 2009, a somewhat different picture in relation to his acceptance of the position in May 2004 emerged.

C Before identifying what in the determination of this Committee is the appropriate sanction to be imposed in this case, the Committee has some observations to make about the manner in which both the misconduct allegation and the conviction allegation have proceeded in tandem before this Committee. It should be emphasised that these are the views of all members of this Committee. Those matters, as I have said, were before the Committee differently constituted - although I have been Chairman of the Committee at all material times - on 14 August 2009.

D That Committee in contrast to the present Committee was told at the outset of that hearing of both the misconduct allegation and the conviction allegation. No witnesses were available on that date to deal with the misconduct allegation, the facts of which were, as it turned out, in issue. The Registrant maintained, as he subsequently maintained before us, that he used his professional judgment in the supply which he made to the person whom he believed to be his patient and that he acted in good faith in that patient's best interests.

E At that stage the Presenter, who I emphasise in fairness to Mrs Davis was someone who was covering for Mrs Davis while Mrs Davis was on leave, invited the Registrant to agree that the documents in the bundle relating to the misconduct allegation could be placed before the Committee with a view to the Committee treating them as admitted facts. As I sought to emphasise to that Presenter, both on that occasion and at a subsequent case management meeting held in these proceedings, where facts are in issue in disciplinary proceedings it is necessary for the Society to adduce the relevant evidence through live witnesses. If authority is required for that well-known proposition, it can be found in such decisions as Panjawani v. Royal Pharmaceutical Society of Great Britain (2002) EWHC 1127, per Sedley LJ and Black v. Royal Pharmaceutical Society [2005]EWHC 2819, per Mr Justice Collins.

F Following the affirmation by the Registrant before the Committee on 14 August 2009 that he continued to deny the factual matrix underlying the misconduct allegation, I said this:

H

A "THE CHAIRMAN: As it seems to the Committee there are two possibilities in this
scenario. The first is that the misconduct allegation, which pursuant to Rule 32 of the
Rules ought to be heard first could, if the Society so agree, be withdrawn. If the
Society withdraws that allegation then we will continue to hear the allegation relating
B to the conviction matter as to which, as it seems to us as at present advised, Mr Mehta
advances no observations. If, however, the Society on instructions wishes to pursue
the misconduct allegation the Committee as at present advised, and subject to further
submissions from the Society, is minded at this stage to adjourn all matters.

THE PRESENTER: Your Honour, I can confirm now that the Society does not wish
to withdraw the misconduct allegation.

C THE CHAIRMAN: If that is your view, Ms Smeethe, you do not need to elaborate it.
You are entitled to that view and in the circumstances I think it would be sensible for
the Committee to give a reasoned determination as to its preliminary view. It may be
that on deliberation we may shift from that view, but we know what the Society's
stance is. Mr Mehta, do you wish to say anything about what I have just said?

D MR MEHTA: No, your Honour.

THE CHAIRMAN: Very well, so you understand what I am saying?

E MR MEHTA: Yes.

THE CHAIRMAN: If the Society intends to press on with both allegations, currently
the Committee's view is that the matter should be adjourned so that matters can be
properly proved because you do not formally admit all aspects of the 2004
misconduct allegation. Do you understand that?

F MR MEHTA: I do understand."

G The Committee then withdrew to consider what it should do next. I then proceeded,
with the full concurrence of the members of the Committee, to deliver a reasoned
determination. All members of that Committee had agreed what I then said. I do not
repeat it now, but it must be understood as being incorporated in these present
observations and it can be found at pages 25H to 29B of the transcript of those
proceedings.

H Seven days later the Society sought case management directions. First, they asked for
a direction that witness statements, which at least in part were objectively not
accepted by the Registrant, should stand as their evidence in chief, and that those

A witnesses be not required to attend for cross-examination. Second, the Society
maintained its stance that joinder of both allegations was appropriate. Third, the
Society asserted that unless all matters were before the Committee an unduly lenient
decision could be reached. A case management meeting was directed and on 8
B October 2009 I made some observations which deserve repetition. Addressing Mr
Mehta I said this:

"THE CHAIRMAN: I am not going to invite you to pick out those bits in the witness
statements in the misconduct bundle because there are overlaps within these witness
statements between that which I suspect you would be prepared to agree and that
C which you would not be prepared to agree. In my judgment it would be quite wrong
to ask you as an unrepresented Registrant now to give your informed agreement to the
introduction of these witness statements before the Committee. That is my decision in
relation to that. To the extent that the Society require those witnesses to attend a
future disciplinary Committee hearing they will need to make arrangements for those
witnesses to attend to give evidence so at that hearing you will be in a position to
D cross-examine those witnesses as you think fit. Do you understand?

MR MEHTA: I do, your Honour.

THE CHAIRMAN: In the light of that direction it seems to me, as it seemed to me on
14 August, and this was a Committee view and not just my own view, that the Society
E should now give very careful and active reconsideration to their decision to proceed
with the conduct allegation as well as the allegation based on the conviction.
I repeat that it is for the Society to consider, as well as the Chairman of the
Committee, the just and expeditious management of the case. This is a case in which
the Society will have no difficulty now in establishing the relevant facts for the
F purposes of the conviction allegation, since the facts are now agreed.

In terms of the conduct allegation, which the Society hitherto has chosen to pursue in
tandem, subject of course to the requirements of the Rules, with the conviction
allegation, it seems to me considerable expense and possibly delay will be caused as a
result of a decision to pursue a conduct allegation which when looked at objectively
and pragmatically there is little purpose in so doing given the circumstances which are
G not, and cannot be disputed by Mr Mehta; namely that in circumstances which are
distinct from the background to the conduct allegation he received a custodial
sentence in the Crown Court. In the light of those observations it would of course be
open to the Society now to modify its stance, but that is a matter for Ms Smeethe as
the Society's Presenter, to consider.

H MS SMEETHE: Your Honour, the Society has already carefully considered its

A position. Even if we were able to drop the conduct charges which would cause
considerable difficulty as these have been properly referred by the Investigating
Committee and any decision to drop them would involve sending it back to that
Committee and inviting them to rescind their previous decision, which I am not sure
they would be prepared to do, even if the Fitness to Practise Department thought it
B appropriate to ask them to do that. Apart from a practical difficulty, I submit that it is
in the public interest both in relation to upholding public confidence in the profession
and maintaining standards that allegations of this serious nature should be
investigated thoroughly up to and including a hearing.

C THE CHAIRMAN: Then, Ms Smeethe, they will be and you will have to call all the
evidence so that the Committee can make a finding. I very much doubt whether the
procedural route which you have identified is strictly necessary to be travelled in
terms of going back to the Investigating Committee.

D This matter is now before the Disciplinary Committee. The Disciplinary Committee
gives case management directions, and it would not, in my judgment and on my
reading of the Rules, be necessary to seek the permission of the Investigating
Committee to discontinue proceedings that are currently pending before the
Disciplinary Committee."

E It is to be emphasised that had the Society been prepared to modify its stance and to
have permitted the Committee on 14 August last year to deal with the conviction
matter alone, which has not and could not have been denied, considerable time and
expense would have been spared. All that would then have been necessary was for
those representing the Society to take the pragmatic view that the presence of the
misconduct allegation was likely to add little, if anything, to the gravamen of the
conviction allegation, even if the misconduct allegation was proved to the hilt.

F It is worth recording that both the pharmacist member and the lay member of this
Committee regarded the allegations in the misconduct matter as weak and
insubstantial even before the evidence was deployed. In the result we are in no doubt
that the public interest has not been served by the deployment of this evidence in
G yesterday's hearing.

H An elderly patient, obviously in frail health, was obliged to attend the hearing in a
wheelchair merely to prove that she lived at a particular address and did not know the
woman who purported to be the patient for whom in May 2004 the Registrant
dispensed Cytotec in the mistaken belief that she also resided at that address and had
the same GP.

A | A retired inspector of the Society was called out of his retirement to say, among other things, that he had been mistaken about some of the material facts almost six years ago. A retired police officer was similarly obliged to attend; his evidence proved wholly uncontroversial. A regulatory body is obliged to exercise judgment when it purports to act in the public interest.

B | What no member of the Committee knew until the sanctions stage of this hearing was underway was that this Registrant had previously appeared before the Statutory Committee of the Society. The background to that previous appearance was that following a three-day trial he had been convicted in the Crown Court of 10 counts of false accounting and received in the Wood Green Crown Court a suspended sentence of imprisonment on 18 December 1996. That Committee recognised, and the Registrant was bound to have understood this, represented as he then was by leading counsel, that it was taking an exceptional course in not striking the Registrant off the register; that decision was on 9 April 1998.

D | The Statutory Committee then said:

E | "Those who hear this case and who may think that by acting dishonestly with the public purse there is a good chance that they may escape being struck off the register should heed this warning. It is only a very rare case which receives anything but being struck off the register. What Mr Mehta has done qualifies him for being struck off, but our view is that on striking the balance and hearing all about the circumstances, meeting the man, and the women and men who have known him all these years, and indeed admired him and have come here, we think we can make that very rare exception in his case. We are going to do so for the reasons I have given, particularly the nature of the man, the confusion possibility, the fact that he was so open and naive about it and the work that he does in the community and elsewhere."

F | I need not read further from the decision of the Statutory Committee on that occasion. The fact is that despite that warning between February 2005 and September 2006 this Registrant deliberately set about enriching himself at the expense of the National Health Service. It is salutary to note the observations of Judge Robert Hardy in the Southwark Crown Court. He said this:

G | "Between February 2005 and September 2006, you defrauded in effect the National Health Service of some £45,000 by falsifying your monthly returns regarding drugs that you had prescribed.

H | The fraud that you perpetrated fell in three categories, but there is no need for me to go into details. I take into account all the references that I have now read on your

A | behalf from your family and in regard to your health. I take into consideration that
you did stop this fraud in August 2006 before your arrest some 3 months later.
I take into account that it is said on your behalf that you were threatened to carry on
with this fraud, otherwise you would have stopped earlier. I have to take into account
also the fact that 10 years ago, in 1996, you pleaded guilty to 10 similar offences of
B | fraud in regard to your pharmacist's practice, where you were sentenced to a
suspended sentence of 3 months on each of the counts."

In fact, with respect to the learned judge, he made an error in Mr Mehta's favour
because of course, as I have recounted, Mr Mehta did not plead guilty to those
C | matters, he was convicted by the jury following a three day jury trial. Judge Hardy
went on to say:

"I take into consideration the ambiguity that may be attaches to these offences, as
expressed in the ruling by the Royal Pharmaceutical Society that took place after your
sentence by the court."

D | That was clearly a reference to the passage to which I have recently referred in the
determination of the Statutory Committee. Judge Hardy continued:

E | "But at the very least, that sentence in 1996 should have been a very severe warning
to you against this sort of conduct and unfortunately, 10 years later, you were not
dissuaded from repeating the error of your ways, and so, but in any event, these are
serious offences by a professional man in a respected profession."

F | That is the background to our duty now to consider the appropriate sanction. Before
us you have appeared in person and you are to be commended for the courtesy which
you have extended to this Committee throughout these unnecessarily protracted
proceedings. The Committee notes that while on previous occasions both in the
Crown Court and when before the Statutory Committee you were represented by
leading counsel and were supported by many references, the absence of both indicates
to the Committee that you are, for practical purposes, a ruined man and you await a
decision which for so long you have regarded as inevitable.

G | Today you have put before the Committee for its consideration, and the Committee
has of course read it, a letter dated 9 January 2009, but as it appears to the Committee
that was addressed to the judge in the Crown Court, it was used for that purpose in the
Crown Court and regrettably no one appears today to support you by way of oral or
written reference.

H | The Committee is well aware of the range of sanctions available to it and its

A obligation to consider those sanctions in an ascending order of gravity. We are
obliged to consider the public interest, which includes the protection of members of
public, the maintenance of public confidence in the profession and declaring and
upholding proper standards of conduct and performance. The object of these
proceedings is not to punish you for the criminal offences of which you have been
B convicted, but to maintain the highest standards and reputation of the profession. We
have had careful regard to all those factors. We are well aware of the guidance given
to this Committee on indicative sanctions and which the Committee approved in
March 2007.

C In our judgment, your conviction in 2008, which beyond argument involved
dishonesty and was your second conviction for dishonesty while practising as a
pharmacist, amounts to behaviour which is fundamentally incompatible with
registration, and public confidence in the profession demands no less a sanction than
your removal from the register and that is our determination.

D MRS DAVIS: Your Honour, one further point. In relation to interim measures, the
Society would seek for an immediate suspension pending the coming into force of the
removal. This was a case where, as you now know, an interim order was in fact in
place. Bearing in mind that the allegation brought the pharmacy profession into
disrepute I would ask for suspension pending the coming into effect of the removal.

E THE CHAIRMAN: Have you anything to say about that Mr Mehta? You have an
entitlement to appeal our decision and the order that is being sought by Mrs Davis is
merely to maintain your suspension pending the time delimited for your appeal.

MR MEHTA: I agree with all the sanctions you have given.

F THE CHAIRMAN: Thank you. I will consult with the Committee. (The Committee
conferred)

THE CHAIRMAN: Yes, we agree. Thank you.

G

Susanna Glanville MBIVR
T. A. Reed & Co. Ltd.
11 March 2010

H

A

B

C

D

E

F

G

H