

ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN

DISCIPLINARY COMMITTEE

1 Lambeth High Street, London SE1 7JN

Thursday 24 June 2010

Chairman: Mr Patrick Milmo QC

Committee Members: Mr Peter Jones
Mrs Kathryn Douglas

CASE OF:

McASEY, Ian Anthony
(Previous Registration Number: 85173)

DETERMINATION

MR JEREMY LORAN, Case Manager, instructed by the Fitness to Practise & Legal Affairs Directorate, appeared on behalf of the Royal Pharmaceutical Society.

MR GRAHAM SOUTHALL-EDWARDS of PDA appeared on behalf of Mr McAsey, who was present.

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

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

DETERMINATION

A

THE CHAIRMAN: This is an application by Ian Anthony McAsey under Article 55 of the Pharmacists and Pharmacy Technicians Order 2007 for his name to be restored to the Register. Mr McAsey's name was directed to be removed by the Statutory Committee, as the

B

Disciplinary Committee was then called, in July 2007, following a hearing at which it was decided that he had committed such misconduct as to render him unfit to be on the Register. The removal was effective from 23 October 2007.

B

C

The Pharmacists and Pharmacy Technicians Order 2007 provides, in Article 55(2)(a), that an application may not be made before the expiration of 5 years from the date of removal. But the hearing before the Statutory Committee took place under earlier legislation and the transitional provisions of the 2007 Order expressly provide that the 5 year restriction does not apply to the first application for restoration where the applicant's name has been removed under the

D

previous legislation.

D

E

It is necessary to say something about the misconduct which led to the Statutory Committee to decide that Mr McAsey's name should be removed. The background facts are quite complex, but a sufficient summary would be that on four occasions between May and July 2004 Mr McAsey caused his employers, a company called Moss Pharmacies, to pay to a bank account in his son's name remuneration for work Mr McAsey had done at his employer's pharmacies as a

F

locum, to which he was not entitled as he was in full time employment as an Area Development Manager of Moss Pharmacies. Those monies were transferred from Mr McAsey's son's bank account to his own bank account.

F

G

Before the Statutory Committee Mr McAsey, though admitting the basic facts, denied that he had acted dishonestly, asserting that the monies were transferred by mistake by his hitting the wrong button on his computer. This defence was rejected by the Statutory Committee; it said that the explanation was simply not credible. To quote the exact words of the Chair, "We do not find it credible that he," that is Mr McAsey, "hit the wrong button on no fewer than four occasions." Accordingly the Committee found that Mr McAsey had acted dishonestly.

H

A | It should next be mentioned that before us Mr McAsey has changed his stance, and he has told
us that he now accepts that he was dishonest. This change has required some explanation, and
he has been closely questioned by members of the Committee as to how he reconciles this
B | admission with what he said to the Statutory Committee, and indeed with what is contained in
his written statement supporting his application for restoration. That statement expresses
understanding of why the Statutory Committee reached its decision and concedes that errors
and mistakes were made by him, and that his actions were “inappropriate”, but it does not
contain any admission of dishonesty.

C | Mr McAsey’s verbal evidence before this Committee was that he must have persuaded himself
at the time of the Statutory Committee hearing that he could not have acted intentionally when
causing payments to be made to his son, but on further reflection he recognises that cannot be
right and he must have acted knowingly and deliberately.

D | It was evident to us that for Mr McAsey, when seeking to explain his conduct and his varying
attitudes towards it, it has been a profoundly embarrassing experience, but we accept that he
has been truthful to us, and this late conversion to acceptance of dishonesty is neither
disingenuous nor contrived.

E | We have gone into this aspect in some detail, as one of the matters we must consider is the
degree of insight shown by the applicant into the gravity of the original offence and
misconduct. We think that Mr McAsey, with difficulty and perhaps painfully, has reached a
position where he has full insight into his personal responsibility involved in his misconduct.

F | There are other matters that we have to take into consideration. One is the seriousness of the
offence, and of course we are dealing with an offence which involves dishonesty. But there are
mitigating factors, in our view. Mr McAsey was in conflict at the time with his employers. He
G | maintained that they owed him money, and he had an ongoing grievance that he was being
exploited, in that he would be made to do many sessions as a locum for which he felt he was
not being properly paid. He further considered that he was being overworked, and was under
great pressure of work at the time that the offences were committed.

H |

A The “victim” in this matter was not a public authority or public fund, nor was it any member of the public, and perhaps it might be said that the misconduct was an episode in an ongoing dispute between an employer and an employee. Further, the money, totalling £548, was all paid back by Mr McAsey fairly promptly, and in any event long before the Society commenced its investigation.

B Any misconduct involving dishonesty must be regarded as serious. However, looked at in the context of all the circumstances, if one can grade levels of dishonest conduct, this comes at the lower end.

C In considering an application for restoration we must have regard to the purpose of sanctions, which governed the decision of the Statutory Committee to order the removal of Mr McAsey’s name. As everyone here will know, the purpose of sanctions is threefold:

- D
- (a) The protection of the public;
 - (b) The maintenance of public confidence in the profession; and
 - (c) The maintenance of proper standards of behaviour by the profession.

E The protection of the public is not a relevant consideration in this case as the public have never been placed at risk by the conduct of Mr McAsey.

F As regards the maintenance of public confidence, and to a lesser extent the maintenance of proper standards of behaviour, we regard as highly relevant the attitude of Mr McAsey’s employers at the time and after Mr McAsey’s name was removed. His employers were, and indeed are, a large and reputable company by the name of Rowlands Pharmacies. In June of 2007 Mr McAsey was working for that company as a Branch Manager. Clearly he could not continue to be employed in that position after his name was removed. However Rowlands Pharmacies continued to employ Mr McAsey but in a changed position as an Area Coordinator. That in our view not only showed a high regard for his abilities, but also a considerable trust in his underlying integrity.

H

A | Indeed the company has provided testimonials signed by senior members of the staff. One of those testimonials is from the Superintendent Pharmacist Mr Cowan, and it is at page 16 of the bundle. I will read two paragraphs:

B | “Mr McAsey was employed by Rowlands Pharmacy as a pharmacist manager in a busy community pharmacy. As a pharmacist he was respected by his community customers and as employers we have never had any reason to doubt his professional integrity or competence.

C | Such was our respect for Mr McAsey that we continued to employ him following the decision to remove his name from the register. He is still employed by Rowlands Pharmacy at present.”

D | The other testimonial from Rowlands Pharmacy is from Mr Marsh, who is an Area Manager, at pages 14 and 15 of the bundle. The third paragraph of the letter from Mr Marsh reads as follows:

E | “I have placed a considerable amount of trust in Ian. He manages his own work schedule and is a point of reference for the branches in the area. I have had no reason to doubt Ian’s integrity. I consider him to [be] trustworthy and honest. He has been diligent in his duties and his experience in pharmacy and field management has been a considerable boon to me in the running of my area. He is well respected by the staff in branches and at head office.”

F | If Rowlands Pharmacy can show this degree of confidence in Mr McAsey, we cannot believe that the public at large would have any less confidence in the profession if his name was restored, nor in our view would proper standards of behaviour be placed in any way in
G | jeopardy.

H | Further, these testimonials and other testimonials indicate that Mr McAsey’s conduct since the removal of his name has been beyond criticism.

A We have covered nearly all the applicable matters which under the Guidance Notes issued by
the Society have to be considered by us on an application for restoration. What we have not
dealt with are efforts by the applicant to demonstrate suitability to be restored to the Register,
including attempts to keep up to date in terms of knowledge and skills, and with development
B in practice. In this context what is material is that Mr McAsey has been working, since his
name was removed, in the world of pharmacists and has been deeply involved in
pharmaceutical practises.

What he has done in this regard is summarised in his own witness statement, and I refer to
C paragraphs 12 to 15. He has been involved with pharmacists and pharmacy managers in their
preparation for Primary Care Trust visits and Society Inspector visits. He has worked under
the authority of the Area Manager and Pharmacy Superintendent's Office to guide and advise
pharmacists in these areas, which have involved maintaining CD registers. He has been
involved in the introduction of new SOPs, helping the pharmacists and their branches
D implement any changes that have been required. He has been involved in training for nursing
homes, residential homes and community carers, and he has conducted twelve such training
events since October 2007.

E We are satisfied that Mr McAsey has detailed familiarity with what is and has been happening
in the world of pharmacy, and with the developments in practice and with the administration
and organisation of pharmacies. But he has not actually practised. He has not undertaken a
"Return to Practice" course, and we feel that is a necessary step for anyone who has been
debarred from practice for a number of years. However this is not in itself a reason for
F refusing the application for restoration, as it can be remedied by an appropriate condition.

Finally we deal with the length of time since his name was removed, which is a little under
three years. As I have at the outset pointed out, under the 2007 legislation the minimum time
G that has to expire before an application for restoration is made is 5 years. The question arises,
should that be a yardstick by which to judge the appropriate time in this instance before one
can grant an application for restoration? In some cases it perhaps should be regarded as a
yardstick, but we have to recall, particularly in this instance, that the sanction of removal was
imposed under a different statutory regime, under which the choice of sanctions was limited to,

H

A on the one hand, removal of the registrant's name, and on the other, a reprimand. There was nothing in between those two sanctions.

B Under the 2007 legislation there is a far wider range of sanctions now available, and removal is reserved for the most serious cases where no other sanction, such as suspension or an order for conditional registration, is appropriate.

In the circumstances we do not regard this application to be premature, and we consider that Mr McAsey's name should be restored.

C However, as earlier indicated, we consider that the restoration should be subject to conditions, and what we direct is that Mr McAsey's registration should be conditional upon his compliance with the following requirements:

- D
- a. That within the next 12 months he completes a Return to Practice course and lodges with the Society a certificate that he has completed such a course; and
 - b. That until the certificate has been lodged he is not to work as a single handed practitioner and/or Superintendent Pharmacist, and/or Responsible Pharmacist.
- E

That is our decision.

You look as if you are anxious to say something, Mr Edwards.

F MR SOUTHALL-EDWARDS: I am anxious just to clarify the conditions, sir, because of the – well, again, this frequently comes up more with the Health Committee than here, just exactly what 'single handed practitioner' is. Clearly a Superintendent Pharmacist we have got no difficulty with, and I know obviously where probably you have drawn those words from in the Standard Practice Conditions, but in my experience of Committees, 'not to work as a single handed practitioner' has generally been interpreted to mean 'not to run one's own business.'

G And obviously I am conscious of the fact that in the majority of pharmacies owned by Rowlands there will only be one pharmacist in the pharmacy. Am I right in thinking that it is your intention that Mr McAsey would be able to work in one of Rowlands Pharmacies as the only pharmacist, but not able to run his own business, as it were?

THE CHAIRMAN: No, you are not right.

H MR SOUTHALL-EDWARDS: Right. May I then have, as it were, clarification of what the restriction is that has been placed so that we can ensure that he complies with it, sir?

A

THE CHAIRMAN: He is not to work as a pharmacist on his own.

MR SOUTHALL-EDWARDS: Thank you, sir.

THE CHAIRMAN: Is that clear?

B

MR SOUTHALL-EDWARDS: That is very clear. I am grateful for the clarification, because in previous determinations by Committees it has been a considerable difficulty. Superintendent pharmacist, single handed practitioner – I am sorry, the third restriction was?

THE CHAIRMAN: Responsible Pharmacist.

C

MR SOUTHALL-EDWARDS: And there you are using the term ‘Responsible Pharmacist’ I assume, in the terms used in the Regulations made in October 2009?

THE CHAIRMAN: Yes.

MR SOUTHALL-EDWARDS: Yes. I am grateful for that clarification. I am sorry if that seems stupid, but there have been problems with such conditions before, and I thought it better to ask now.

D

THE CHAIRMAN: I understand. Have you got anything further to say, Mr Loran?

MR LORAN: Nothing further from me, sir.

THE CHAIRMAN: Right. Thank you. In which case, that concludes the case.

E

MR SOUTHALL-EDWARDS: Sir, I have instructions to thank the Committee for its consideration of the case today.

F

G

H

A

B

C

D

E

F

G

H