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THE ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN

THE DISCIPLINARY COMMITTEE

DATE OF HEARING: Tuesday 1 December 2009

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CHAIRMAN: Mr Patrick Milmo QC

COMMITTEE MEMBERS

C

Mr Colin Lowe
Mrs Kate Douglas

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IN THE CASE OF:

DR CATHAL THOMAS GALLAGHER (1068176)

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MS CATHERINE SMEETHE, Solicitor and Senior Case Manager, appeared on behalf of the Society.

MR GRAHAM SOUTHALL-EDWARDS, of the PDA, appeared on behalf of the registrant who was present.

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PROCEEDINGS IN PUBLIC - DAY TWO

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**Transcript of the Shorthand Notes of TA Reed & Co
Tel No: 01992 465900**

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A THE CHAIRMAN: We will retire to consider our decision.

[The Committee retire in camera at 9.50 am until 12.30 pm]

DETERMINATION

B THE CHAIRMAN: The Committee has had to consider what is the appropriate sanction in this case. It has been a difficult and troubling task.

C The finding of the Committee has been that the registrant, Dr Gallagher, dishonestly appropriated 28 tablets of Dexedrine from a pharmacy where he was working for the day as a locum. Dr Gallagher had admitted taking the tablets from the pharmacy unlawfully, in breach of the Medicines Act 1968 and the Misuse of Drugs Regulations 2001 and the Society's Code of Ethics, but had contended that he was doing so as part of academic research into the inadequacy of security measures in relation to the custody of controlled drugs and that he had no intention of retaining the drugs. That story we could not accept. We did not believe that Dr Gallagher did have the intention of returning the drugs.

D That was not the only dishonesty involved. When Dr Gallagher's unauthorised removal of the drugs was discovered, he tried to pretend that other packs of Dexedrine that he had in his possession were the drugs he had taken from the pharmacy and to support that pretence he removed the batch number and expiry date markings on the blister packs of these drugs. Further, he lied to the Society and initially to this Committee in the explanations he put forward for his conduct in the form of statements which he presented as the truth, but had to admit were untrue. It would be no exaggeration to say that Dr Gallagher's overall conduct in this matter has been riddled with dishonesty.

E That is one side of the case; we might call it the dark side. On the other side, it is clearly apparent that Dr Gallagher has been and is making a valuable contribution to the practice of pharmacy. He is not a practising pharmacist but an academic pharmacist and after qualification and a spell of teaching at Nottingham University he is now a Principal lecturer in the School of Pharmacy and Public Health Practice at the University of Hertfordshire. There has been put before the Committee no less than 22 testimonials, most of them from persons holding senior positions in the School of Pharmacy or at other universities, and all of them pay tribute in laudatory terms to Dr Gallagher's talents as a pharmacist and teacher of pharmacy, emphasising his reputation as a person of the highest integrity.

F The stark difference between the seriousness of Dr Gallagher's misconduct and his ability and achievements as an academic pharmacist are at the heart of our dilemma as to what is the appropriate sanction.

G We have first reminded ourselves of the purpose of sanctions, which are well known, but merit repetition. The three-fold purposes are, firstly, the protection of the public, secondly the maintenance of public confidence in the profession and, thirdly, the maintenance of proper standards within the profession.

H As Dr Gallagher rarely practices as a pharmacist these days it is the second and third factors which clearly are of the most importance in this case.

A The theft - there is no other word for it - of controlled drugs from a pharmacy where the pharmacist is working is at the apex of seriousness, undermining public confidence in the pharmacy profession and wholly irreconcilable with proper professional standards. It is an aggravating feature of this case that dishonesty was not confined to the offence of misappropriating the drugs, but compounded by the deception and lies that Dr Gallagher employed to evade responsibility. Furthermore, that conduct involved breaches of trust, premeditated actions, concealment of what he had done and a failure to co-operate in the ensuing investigation.

B It has been recognised by Mr Edwards on the registrant's behalf that a warning, the least severe sanction is manifestly inappropriate, and as for the imposition of conditions a the only condition that Mr Edwards could suggest was one where Dr Gallagher would be barred from actually practising. We doubt, it has to be said, whether the power to impose conditions upon continued registration was intended to include the condition of not practicing, as the underlying purpose of registration is to enable a registrant to practise. There would be an inherent contradiction.

C The ultimate sanction is removal from the register and it has to be noted that the Indicative Sanctions Guidance states that removal may be appropriate when dishonesty is involved in the misconduct. Indeed, no other sanction is suggested as appropriate where dishonesty is involved.

D We have thus given very serious consideration as to whether, despite the testimonials, the requirement to uphold public confidence in the profession and the maintenance of proper standards, compel us to direct in this case the removal of Dr Gallagher's name from the Register. We are not diverted from such a course merely by the fact that there are numerous supportive testimonials and tributes to his honesty and professionalism.

E However, what has particularly impressed us about the content of many of these testimonials is that they indicate that Dr Gallagher has not just been competently doing his job as a teacher, but has been proactive in making a positive contribution to the study of pharmacy and pharmacy teaching. This has included the publication of articles in the Pharmaceutical Journal, the launching of the Pharmacy Law and Ethics Association Essay Award, which he has continued to organise, and the recent nomination for the University of Hertfordshire Tutor of the Year Award. It says something for Dr Gallagher's talents and energy as a teacher that having been appointed in April 2007 to the position of senior lecturer in Pharmacy Practice at the University of Hertfordshire within two years, in April 2009, he was promoted to the position of Principal Lecturer in Patient Safety.

F The general message conveyed by the numerous letters in the testimonial bundle is that Dr Gallagher is making an invaluable contribution to the profession of pharmacy by the excellence of his teaching of student pharmacists. To quote from one letter, which may be regarded as a summary of what is contained in many others:

G "He has demonstrated an aptitude for very high quality teaching with a view always to ensure that the School develops highly competent pharmacists in the future."

H That benefit which Dr Gallagher has been providing, and is providing, to the future

A | welfare and high standards of the profession is one which allows us to relent from imposing the sanction of removal which we think would be the usual decision where there has been dishonesty of the degree shown by Dr Gallagher in this case.

B | We also bear in mind that this incident happened over three years ago and there has been no suggestion of any similar conduct either before or since. It may be regarded as aberrant behaviour which is atypical of Dr Gallagher and is most unlikely to be repeated. In this context there have been references in some of the letters, particularly that of Professor Winfield of Nottingham University, to Dr Gallagher's immaturity in the past which, in her view, he has now grown out of. It may well be that it was in this period of immaturity that the misconduct occurred. We also should state that it has been evident from Dr Gallagher's demeanor before this Tribunal that he is thoroughly ashamed of what he has done.

C | If we are able, in the exceptional circumstances of this case, to find that removal is not the appropriate sanction we cannot, however, avoid imposing a severe sanction albeit less drastic than removal from the register, if public confidence on the profession is to be maintained and proper standards of conduct upheld. The most lenient sanction in the circumstances is that of suspension of registration and we, therefore, direct that Dr Gallagher be suspended for the maximum period that Article 52 (3) of the Pharmacists and Pharmacy Technicians Order 2007 permits, namely 12 months.

D | We further direct under Article 52(4) of the Order that there should be a review, prior to the expiry of the 12 month period, at which the Committee can consider whether the suspension should be extended, or whether Dr Gallagher's registration should be made conditional upon his compliance with appropriate conditions.

E | In addition we make an order under Article 58 that the suspension shall take place forthwith and we do so as we consider that such an order is in the public interest.

F | We would like to add this. We appreciate that there is a certain irony in the fact that Dr Gallagher's expertise as a teacher has been in the area of law and ethics of pharmacy. We recognise that following his appearance in front of this Committee and the decision of this Committee the University at which he is employed may feel bound to consider his future position. That is not a matter for us, nor would it be appropriate for us to send any message to the University. We can do no more than express the hope that Dr Gallagher is enabled to continue his career as an academic pharmacist and thereby continue to contribute to the education of future pharmacists.

That concludes our decision on sanctions.

Is there anything further?

G | MS SMEETHE: I have no further matters.

MR EDWARDS: I have instructions to thank the Committee for its consideration of this matter and on the instructions of Dr Gallagher I am instructed to say he assures the Committee there will be no repetition of this behaviour.

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