

**The Royal Pharmaceutical Society of Great Britain
In the Matter of an Appeal to the Registration Appeals Committee**

**Miss Siobhan Goodrich: Chair
Dr Anthony Theobald: Pharmacy Member
Mr Paul Sommerfeld: General member**

Date of Hearing: 7th December 2007

BETWEEN:

YUNIS NAZIR

Appellant

and

**THE ROYAL PHARMACEUTICAL SOCIETY
OF GREAT BRITAIN**

Respondent

Representation

For the appellant: Mr Graham Southall-Edwards instructed by the
PDA

For the respondent: Mr Tom Rider of Field Fisher Waterhouse

DECISION

Introduction

1. Mr Yunis Nazir appeals against the decision of the Registrar made on 15th August 2007 to refuse his application for registration in the Register of Pharmacists on the grounds that he had failed to satisfy the Registrar that his fitness to practice is not impaired as required under Article 11(a) (ii) of the Pharmacists and Pharmacy Technicians Order 2007 (“the Order”). The decision of the Registrar is an appealable decision under Article 42 and the appeal is brought under Article 43(1) of the Order.

The Background.

2. On 21st October 2004 upon his plea of guilty the Appellant was convicted at Bath Magistrates Court of theft of £210 (as recorded in the memorandum of conviction) from his workplace, Spar Stores. He was conditionally discharged for a period of one year and ordered to pay £40 costs.
3. At the time of the offence the Appellant was a 22 year old student about to start his third year on the MPharm degree course at the University of Bath.
4. In July 2007 the Appellant applied for registration with the Society and disclosed that he had been conditionally discharged for an offence of theft from the workplace. Asked for further details by the Registrar he stated that he took £200 from his workplace “which I did return”. The application was countersigned by his Pre-Registration tutor, Stephane Jaglin.
5. On 25th July 2007 the Registration Directorate of the Society requested further information including a description of the circumstances of the offence including any mitigating factors, a copy of the certificate of conviction/caution, at least one testimonial and any additional evidence of bearing to the Registrar’s decision including any rehabilitation steps and insight regarding the offence.
6. By letter in reply dated 27th July 2007 the Appellant described the offence for which he was convicted stating that he was due to pay rent the following day and that he took the money out of desperation because of financial difficulties. He stated that the day after the incident he went to the store to apologise for the trouble

he had caused. He stated that he regretted his actions, that it had been on his conscience ever since and that he was fully aware that stealing or breaking the law is not acceptable under any circumstance. At this time a short character reference from Mr Jaglin was provided which was countersigned by the store manager of Boots Pharmacy. The Appellant also provided to the Registration Department the custody record in which the circumstances of the Appellant's offence were recorded as follows :

".. following discrepancies with tills he has been placed on obs by the store manager. Tonight the till was £200 out and the manager conducted a search of him and £200 was recovered from his sack".

7. The application was assessed against the Good Character Assessment Framework Template by the Registration Department. It was noted that the evidence was ambivalent in relation to whether the conduct was characteristic and that the custody record suggested a pattern of offending although there was only one conviction.

8. By letter dated 15th August 2007 the Registrar advised the Appellant that she was not satisfied that his fitness to practice was not impaired and that his application for registration was refused. The reasons given were that :
"you committed a serious offence of theft from your employer in October 2004 while a student on the MPharm course at the University of Bath. The offence is recent and relevant to the practice of pharmacy. If committed by a registrant, this sort of offence will always result in a hearing by the Disciplinary Committee and, in previous such cases, removal has been considered a proportionate response. I have taken into account the information you have given about the circumstances of the offence, your regret and insight into it and the testimonial you have provided but I do not consider that these outweigh the seriousness of the offence."

The Appeal.

9. Article 11 of the Order provides that:

"Subject to the provisions of and rules under this Order, a person shall be entitled to be registered in the Register of Pharmacists if-

(a) he satisfies the Registrar that-

(i) he is appropriately qualified ...

(ii) *his fitness to practice is not impaired...*”

10. It is common ground between the parties that the nature of this appeal is by way of a rehearing. The Committee would add that its task is to consider the application afresh in the light of all relevant evidence and to make a decision as to whether it is satisfied that the Appellant’s fitness to practice is not impaired as at the date of the hearing. This is essentially a matter of judgement. The burden of establishing that the Registrar’s decision should be overturned lies upon the Appellant. In so far as any facts are in issue the standard of proof to be applied is the civil standard.

11. In the Grounds of Appeal submitted on his behalf the Appellant raised a number of challenges to the Registrar’s decision. Whilst many of these were effectively abandoned and/or considerably modified during the course of the hearing the Committee considers it appropriate to record the essence of the case advanced and to comment thereon hereafter.

12. It was originally contended on the Appellant’s behalf that the statutory criteria laid down in Article 48 of the Order do not apply to a person who at the time of the commission of the offence was neither a registered Pharmacist nor a pre-registration Pharmacist. This point was sensibly abandoned at the outset of the hearing. Article 48 (1) sets out the circumstances in which a person’s fitness to practice shall be regarded as “impaired” for the purpose of the Order and includes in subparagraph (e) a conviction in the British Islands for a criminal offence. Further Article 48(4) expressly provides that :

“A person’s fitness to practice may be regarded as impaired because of matters arising –

(a)...

(b) at any time.”

The reference to a “person” in this subparagraph is notable for it contrasts with other references to a “registrant” elsewhere in the Article. It is thus clear that the Article applies to an applicant’s fitness to practice at any time before registration.

13. It was also contended in the Grounds of Appeal that the refusal by the Registrar was against the interests of the public which has contributed a significant sum of money in the education of the Appellant. Taken to its logical conclusion this submission suggests

14. It was further contended that the refusal to register the Appellant is, in effect, an additional punishment to his conditional discharge and that for this reason it is unfair and unjust. The Committee considers that this submission portrays a fundamental misapprehension as to the purpose of regulatory proceedings, the object of which is not to punish the individual concerned but to safeguard the public interest as properly defined. Any punishment imposed by a court serves an entirely different function. Further, even in the absence of a court sanction, it is almost inevitable that an unsuccessful applicant for registration will have suffered personally and financially by reason of the refusal to register his name. Such factors are, however, of no relevance if registration is not in the public interest.
15. Surprisingly it was also contended that the offence committed “*is not significantly relevant to the practice of pharmacy.*” The Committee agrees with the Respondent’s submission that **if** this assertion actually reflects the Appellant’s own belief it would demonstrate a worrying lack of insight into the seriousness of the offence he committed and its relevance to the profession in which he seeks to practice. The conviction was related to theft from an employer at a time when the Appellant was in the course of his Pharmacy studies. In so far as it seemed to be submitted that it is relevant that the Appellant was not then bound by or fully familiar with the terms of the Code of Standards and Ethics, the Committee disagrees. The Appellant’s actions were dishonest by any ordinary standards and the fact of his offence inevitably raises a serious issue as to his probity and integrity and, thus, his fitness to practice.
16. The Grounds of Appeal also contend that “*there is no evidence that the Appellant has not reformed or that he is likely to repeat the type of behaviour declared to the RPSGB and having paid his debt to society he is entitled fully to contribute to the well-being of society...by being permitted to register...*” The Committee agree with the Respondent’s submission that this misstates the legal test.

The Appellant is only entitled to be registered if he establishes that his fitness to practice is not impaired. Moreover, in the Committee's view, discharge of this burden will almost invariably require the Appellant to adduce positive evidence rather than rely upon the absence of any further negative evidence.

17. In his submissions Mr Edwards relied upon that fact that three years had elapsed since the conviction. He submitted that pharmacists who have committed far more serious crimes have been restored to the Register after periods of two or three years. In so far as it seemed to be suggested that the passage of time is, of itself, a reason to permit registration the Committee strongly disagrees. The relevant issue is whether this Appellant has satisfied the Committee that his fitness to practice is not impaired. A conviction for dishonesty is prima facie evidence of impairment. Moreover, reference to other cases either generically or specifically is not helpful since each case is decided on different facts and different evidence. Just as there are cases where practitioners have been granted registration or indeed been restored to the Register after two or three years, there are doubtless cases where this has not been permitted. The determinative issue is not the simple passage of time but the protection of the public interest by ensuring that only those who establish that their fitness to practice is not impaired are registered.

18. "Fitness to practice" is not defined in the Order. It is a comprehensive term that includes, amongst other matters, the applicant's ability to provide a competent and safe service to members of the public as well as to behave generally in an ethical and responsible way. Parliament through legislation places great trust in both individual pharmacists and the profession as a body. It is fundamental that the public should be able to have confidence and trust in members of the profession. The Code of Standards and Ethics which guides those admitted to the Register requires that pharmacists ensure that they will behave with integrity and probity, adhere to accepted standards of professional and personal conduct and that they will not engage in any behaviour or activity likely to bring the profession into disrepute. It is necessary that those seeking admission to the Register are able to demonstrate (by the absence of any conviction or caution) that their character is such that they can be trusted by the profession and the public to abide by the Code and maintain the highest standards of personal and professional conduct. In circumstances where an applicant has

previously been involved in disreputable conduct, whether in a private or professional capacity, it is thus essential to examine the full circumstances and evaluate carefully the current insight and moral attitude of the person who seeks admission to the Register so as to assess the issue of their fitness to practice in the context of the public interest which includes public confidence in the profession and the maintenance of standards. An important aspect is how the public and members of the profession might view the admission of an applicant to the Register who had previously stolen money when in a position of trust.

19. In this context the Committee turns to consider the evidence. As detected by the Registration Department the custody record suggested the possibility of theft from the same employer on other occasions. An unsigned witness statement drafted by the Appellant's representative was served on 30th November 2007. This statement did not deal with the issue as to whether any other offences had been committed by the Appellant. It also purported to state that the Appellant had confessed to the offence of theft which formed the basis of his conviction before it was detected.
20. The Committee were informed by Mr Edwards that the Appellant did not wish to sign the statement prepared on his behalf because it was inaccurate and, having heard representations, the Committee gave leave for an amended signed statement to be served. In this the Appellant stated that after his theft of £200 had been discovered he returned to his employer the following day and admitted two other previous thefts and repaid an additional sum of £160.
21. In his oral evidence the Appellant stated that he took three sums of money from the till of his employer on three separate occasions over one weekend. On the Sunday he had been challenged by the store manager who said that he intended to conduct a search of employees. It was at this stage that the Appellant admitted that he had stolen money from the till and returned from his rucksack the £200 he had stolen that very evening. The police were called and he was arrested. The Appellant said that he made a full admission and that he was certain that he told the police that he had taken money on two other occasions that weekend. Following his release on bail the Appellant returned to the store the following day with a note of apology and returned the others sums stolen earlier which totalled £160. The manager arrived so the Appellant apologised in person.

22. The late disclosure that the Appellant had stolen money from his employer on three occasions inevitably caused the Committee to question the truthfulness of the Appellant's account generally and to question the true quality of his insight and remorse. Theft, of itself, is always a serious matter. Theft in a position of trust is an aggravating feature. Repeated thefts even over a short period are even more serious because this indicates premeditation. Moreover if the Committee considered that the Appellant had compounded his offence by being less than truthful in the account he had given to the Registrar, it would impact upon the assessment of his current fitness to practice.
23. As set out above the Appellant's letter in July 2007 implied that one offence had been committed and reference was made simply to the sum of £200. The Grounds of Appeal and Skeleton Argument drafted by the Appellant's representative compounded this by referring to a single act of dishonesty. Further the detailed description provided by the Appellant himself in July 2007 could be read to imply that he had confessed to the crime before it was detected. Having reviewed the evidence very carefully the Committee consider that the fact it was not spelt out by the Appellant himself earlier that he had confessed after he had been challenged was a genuine oversight and was not intended to mislead. The Committee has also borne in mind that the document that disclosed that he had been detected in his crime as well as the suspicion that other offences had been committed, was disclosed by the Appellant himself at the same time as his letter and had not been requested by the Registrar. Whilst, therefore, the Appellant could have explained matters more clearly and more fully, on balance, we do not find that the Appellant set out to mislead.
24. The Committee considered very carefully all the evidence adduced that bore on the issue of the Appellant's character and insight. The Committee found the oral evidence from Stephane Jaglin was helpful. He has worked closely with the Appellant as his tutor since he began his pre-registration training. The Appellant told him that he had been convicted of an offence of theft at that time because he had stolen about £200 from the till. Significantly the Appellant had told him that he had stolen money from his employer over a number of days. Mr Jaglin, who impressed the Committee as being a thoughtful witness, believed that the Appellant's dishonesty had been borne of immaturity in the context of financial pressures. He

told us that it was his opinion that the Appellant was today a different person to the young man he first met in 2005 and that he had matured considerably in his judgement. The Appellant had himself identified weaknesses in his clinical knowledge and had set about improving his skills with Mr Jaglin's assistance. He had observed that the Appellant coped well under pressure. The Appellant had been given considerable responsibility in Boots Pharmacy including responsibility for security and takings. His attitude and demeanour to patients was at all times appropriate. Mr Jaglin's opinion was that he was confident that the Appellant's dishonesty was a matter in the past and that he would not bring the profession into disrepute.

25. Mr Jaglin informed the Committee that in August 2007 Boots Pharmacy had offered the Appellant the post of main pharmacist in a new store but this particular post had now been filled because the Appellant had not been registered. Although it was not entirely clear whether Boots were aware of the fact of the Appellant's conviction at the time that this post was offered, the Committee consider that this is likely given that Mr Jaglin's original registration reference had been counter-signed by a Boots manager. Mr Jaglin considered it likely that another post would be offered by Boots if the Appellant succeeds in this appeal.
26. Dr Tan, a close friend of the Appellant since University, and others provided written testimonials that spoke in warm terms about his personal qualities and his general reputation. Dr Tan also gave evidence. He confirmed that the Appellant told him of his conviction soon after it occurred and that he expressed his shame. He also stated that in his opinion the Appellant had changed quite considerably as a result of his training with Boots Pharmacy and that the Appellant had become more steady and mature. He had been impressed by the Appellant's attitude to the significant responsibility associated with his employment.
27. The Committee note that there is no record of any telephone conversation between the Society and the Appellant in 2004. The Committee accept, however, the Appellant's account that he self-declared the fact of his conviction to the Society by telephone because his account of the advice he was then given was entirely credible. The fact remains, however, that he failed to declare his conviction when completing the first section of the pre-registration form in May 2006 which, in itself, is an extremely serious matter.

The Committee consider that it is likely that at this time the Appellant found it difficult to bravely face the consequences of his dishonesty with his employer at that time. The Committee finds, however, that he began to do so when he told Mr Jaglin that he had stolen money on a number of separate occasions. The question that has to be considered is whether the Appellant has now fully absorbed at core level the ethical responsibilities of the profession in which he seeks to practice.

28. The Committee accepts the evidence of Dr Tan and Stephane Jaglin that the Appellant has very considerably matured. The Committee notes that the Appellant has recently married. It considers that the fact that he had to inform his parents in law why he had failed to be registered and the very experience of appearing in these proceedings has had a salutary effect. The Committee is satisfied that it is unlikely that the Appellant will ever commit a similar offence. However, the issue of fitness to practice is, in the Committee's view, more subtle. In order to safeguard the public interest the Appellant must establish that he fully understands the need to be scrupulously transparent in all aspects of his life. The risk is not simply that of repetition of a criminal offence but whether the Appellant can be trusted to act with probity and integrity in all respects and so be considered fit to practice. The Appellant has satisfied the Committee that he can. It considers that, judged in the light of the evidence as to the Appellant's insight, remorse and subsequent behaviour, sufficient time has elapsed since the commission of the offence to mark the gravity of his dishonesty in the regulatory context as well as to enable the Committee to be satisfied that his fitness to practice is not now impaired.

The Decision

29. It is right to say that the Committee considers that the decision of the Registrar was right on the basis of the material then before her. It was entirely correct that in the circumstances of this case the view was taken that the issues relevant to this appeal should be tested and probed in a hearing because of the public interest in the maintenance of high standards and the reputation of the profession of pharmacy. In the light of the evidence now adduced before it the Appellant has satisfied the Committee that his fitness to practice is not impaired. Accordingly it allows the Appeal and directs that the name of the Appellant is entered in the Register of Pharmacists forthwith.

Guidance

30. The Committee takes this opportunity to provide guidance to representatives in relation to the preparation and conduct of Registration Appeals in future.
31. Despite case management directions that required the service of signed witness statements within agreed timescales an unsigned statement in the Appellant's name was served. This unsigned statement contained material inaccuracies in relation to relevant facts which the Appellant drew to the attention of his representative. Whilst, in the event, the Committee gave leave for an amended signed statement to be served, time and effort was wasted.
32. The Appellant's witness statement (even as amended) was in essentially formulaic terms. The Committee would like to make it clear that it expects in future that all witness statements should be recorded in the actual words of the witness. The input of representatives should be limited to ensuring that all relevant matters have been covered and clearly and logically set out. Apart from the risk that material matters are omitted, (as occurred in this case), the repetition of legal argument and matters set out in Grounds of Appeal or Skeleton do not assist the Committee to fulfil its essential task, namely, the assessment of the Appellant's own account as to the facts and his/her own attitude and insight.
33. Some of matters advanced in the Grounds of Appeal and accompanying Skeleton were ill founded in law and some ill founded in fact. Whilst representatives must feel free on instructions to fearlessly advance any points that they consider can reasonably be supported in evidence and in law, it should be clearly understood that in future the pursuit of points that should not have been raised or pursued have the clear potential to become the subject of an adverse costs order.

34. The parties should note that pursuant to Rule 34 (1) of the Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2007, it is a mandatory requirement to serve a schedule of costs or expenses relating to the hearing on each other and on the Secretary no less than 24 hours before the (substantive) hearing. The Committee expects the parties to strictly comply with this rule in future.

Siobhan Goodrich
Chair