

Dr S, Phar19/438P

Charge

Between 16 and 18 December 2019 the Health Practitioners Disciplinary Tribunal (the Tribunal) considered a charge by a Professional Conduct Committee against Dr S, registered pharmacist (the Pharmacist). Similar charges were also brought against three other pharmacists (Mr N, Ms W and Ms E) and all pharmacist's charges were heard together.

The charge against Dr S is summarised as follows:

The Pharmacist dispensed prescription medicines:

1. Flagyl and/or Tramadol on 18 May and 7 June 2017,
2. Tramadol on 22 May 2017,
3. Flagyl and Tramadol on 7 June 2017,

to Ms Deane in circumstances where:

- a. The prescription was not signed by the prescriber as required;
 - b. She failed to adequately check the patient history before dispensing.
4. Flagyl and/or Tramadol on 3 July 2017,
 5. Tramadol on 11 July 2017,

to Ms Deane in circumstances where:

- a. the prescription was not signed by the prescriber as required;
- b. the prescription was not dated;
- c. she failed to adequately check the patient history before dispensing.

It was alleged that the Pharmacist acted in breach of her professional obligations and/or accepted standards of practice for pharmacists. The conduct alleged above either separately or cumulatively amounted to professional misconduct.

Background

In 2017, Ms Deane was given a prescription for Tramadol and Flagyl tablets at a dental appointment. Ms Deane later contacted the dental clinic and said she had lost her prescription, was in pain, and could not attend the dentist in person. An unsigned copy of the prescription was emailed to her.

Later in 2017, an email was sent by the Pharmaceutical Society to all community pharmacists in the North Island, warning of Ms Deane's conduct, and directing any pharmacist presented with one of the prescriptions to contact Police and Medicines Control.

The Pharmacy Council became aware Ms Deane had presented allegedly fraudulent copies of a single prescription at 21 pharmacies between April and August 2017. It was dispensed (at times on more than one occasion) by 37 pharmacists. Of the 60 prescriptions presented, 53 were unsigned.

The fraudulent prescription was dispensed 8 times in total from the Pharmacist's pharmacy, and on 5 of those occasions it was dispensed by Dr S between May and July 2017.

The Pharmacist explained her surprise that she failed to pick up the defects and noted that four of the prescriptions were presented during busy periods. The Pharmacist explained the

story that she was told by Ms Deane of her cancer, her tooth pain and that she was waiting an operation.

The Pharmacist also explained that she is usually very careful about noting the signatures on prescriptions and that her omission to do so on these five prescriptions shows how good the patient was at deceiving people.

Finding

The hearing proceeded on an agreed summary of facts. The Pharmacist accepted that her conduct was negligent. She denied that it was sufficiently serious to find professional misconduct.

The Tribunal found that particulars 1(a), 2(a), 3(a) and (b), 4(a) (b) and (c) and 5(a) (b) and (c) of the Pharmacist's conduct were established as negligent and conduct likely to bring discredit to the pharmacy profession. The remaining particulars were not established.

The Tribunal held that none of the Pharmacist's established conduct was a sufficiently serious, to amount to professional misconduct and did not warrant disciplinary sanction.

The Tribunal also noted that the conduct was not seen as an egregious error given the fraudulent way Ms Deane presented herself.

The Tribunal directed publication of its decision and a summary.

Appeal

The PCC appealed the Tribunal's decision to the High Court. The Court was not persuaded the Tribunal erred in reaching its decision. The Appeal was dismissed. *PCC v A, B C and E [2021] NZHC 949, 8 September 2020.*

The full decision of the Tribunal can be found at: [Pharm19/438P](#)