

## Mr N, Phar19/436P

### Charge

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

The charge against Mr N is summarised as follows:

The Pharmacist dispensed and claimed for prescription medicines Flagyl and/or Tramadol to Ms Deane:

1. On 30 June 2017,
2. On 8 July 2017,
3. On 31 July 2017,

In circumstances where:

- a. the prescription was not signed by the prescriber as required;
- b. he failed to adequately check the patient history before dispensing;
- c. the date of the prescription was outside the 90-day period for claiming subsidies;
4. The Pharmacist failed to raise concerns and take appropriate steps when he knew or ought to have known that Ms Deane was presenting invalid prescriptions to pharmacies;
5. As the charge pharmacist at his pharmacy, he did not ensure the pharmacy was staffed with sufficient pharmacists for the workload.

It was alleged that the Pharmacist acted in breach of his professional obligations and/or accepted standards of practice for pharmacists. The conduct separately or cumulatively amounting to professional misconduct. Use our formatting

### 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 false prescription was presented at Mr N's Pharmacy on 30 June, 8 July and 31 July 2017. On all three occasions, the Pharmacist was the only person working in the dispensary, and he dispensed the Prescription on each of these occasions. The Pharmacist did not notice that the prescription was unsigned or out of date and failed to properly check Ms Deane's history.

The Pharmacist was later told about the prescription by staff at a nearby pharmacy. He did not contact Medsafe or the Police. He understood from the industry-wide emails that had been sent that they were already aware of it.

The Pharmacist believed that he was too focused on ensuring that the medicines were appropriate in terms of dose and selection and omitted to focus on the date and signature on the prescription.

### Finding

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

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

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

The Tribunal 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: [Pharm19/436P](#)