

Ms E, Phar19/437P

Charge

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

The charge against Ms E is summarised as follows:

The Pharmacist dispensed the prescription medicines:

1. Flagyl and/ or Tramadol on 4 May 2017,
2. Tramadol on 13 May 2017, and
3. Flagyl and/or Tramadol on 23 May 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. On 22 June 2017 the Pharmacist dispensed and claimed for the prescription medicines Flagyl and/or Tramadol 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;
 - c. the date of the prescription was outside the 90 day period for claiming subsidies.

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.

Ms Deane presented the prescription at the Pharmacist's pharmacy six times. The Pharmacist dispensed it on four of those occasions; 4 May, 13 May, 23 May, and 22 June 2017.

The Pharmacist failed to check Ms Deane's history before dispensing the prescription. Upon discovering the fraudulent prescription, the Pharmacist contacted Medicines Control and other pharmacies in the area. Her colleague also contacted the prescriber.

The Pharmacist said that she never became suspicious because she knew Ms Deane. The Pharmacist believed her story and knew she was dispensing small amounts, so it was natural to assume the previous prescription medication had been taken. The Pharmacist thought that Ms Deane exploited her inexperience, empathy and trust and that she was a very skilled con-artist.

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) and (c), 3(a) and (b) and 4(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: [Pharm19/437P](#)