

Ms W, Phar19/439P

Charge

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

The charge against Ms W is summarised as follows:

The Pharmacist dispensed and claimed for prescription medicines:

1. Flagyl and/or Tramadol on 4 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;
2. Flagyl and/or Tramadol on 13 June 2017,
 3. Flagyl and/or Tramadol on 18 July 2017,
 4. Tramadol on 25 July 2017,

To Ms Dean 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 dates of the prescriptions were 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.

The Pharmacist dispensed the prescription to Ms Deane on four occasions: 4 May, 13 June, 18 July and 25 July 2017. On each of those days, the Pharmacist was working in sole charge. The Pharmacist failed to properly check Ms Deane's history before dispensing the prescription.

A nearby pharmacy made the Pharmacist aware of the prescription. She subsequently called Ms Deane's dental clinic and another Pharmacy. The Pharmacist also put a note on Ms Deane's file.

The Pharmacist felt isolated in her pharmacy as the sole employee on shift. She stated that at the time, she was distracted by Ms Deane talking about her cancer story. It was convincing, so she did not notice that the prescription was not dated nor signed. The pharmacist did not suspect the prescriptions were fraudulent, as she believed Ms Deane's situation.

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) (b) and (c) and 4(a) (b) and (c) of the Pharmacist's conduct were established as negligent and as 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 to the Tribunal website.

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: [Pharm19/439P](#)