

COUNCIL FOR HEALTHCARE REGULATORY EXCELLENCE
SECTION 29 CASE MEETING OF COUNCIL MEMBERS
ON 31 MAY 2005
AT 11 THE STRAND, LONDON WC2

RE: MR PAUL JOSEPH O'HARE AND THE DECISION OF THE STATUTORY COMMITTEE OF THE PHARMACEUTICAL SOCIETY OF NORTHERN IRELAND MADE ON 13 MAY 2005

PRESENT: Nigel Clarke (Regulatory Member, in the Chair)
Nicholas Wood (Regulatory Member)
Peter North (Lay Member)

IN ATTENDANCE: Sandy Forrest (Director)
Briony Mills (Fitness to Practise Officer)
James Turner (Legal Advisor, O'Reilly Stewart Solicitors)
Christian Dingwall (Legal Advisor, Bevan Brittan)
Edward Hooper (Legal Advisor, Bevan Brittan)

The Statutory Committee's Decision

- 1 Mr Paul Joseph O'Hare (date of birth 8th July 1972) appeared before the Statutory Committee (the Committee) of the Pharmaceutical Society of Northern Ireland (the PSNI) on 13 May 2005 in relation to an inquiry into a conviction.
- 2 At the time of the matters alleged Mr O'Hare was a pharmacist at Mayobridge, Northern Ireland. The charge against him was that on 2nd January 2004 he pleaded guilty to and was convicted of the following offence, namely:

That between 1st January 2003 and 24th April 2003 he sold prescription-only veterinary medicinal products, namely Oxytocin, Spectam, Terramycin, Chanoprim, Alamycin, Cepravin, Norocillin, Norocillon 10% Pen Strep, Noroclox DC Alamycin 10% and Leo Yellow otherwise than on the prescription of a veterinary surgeon, contrary to section 58(2) of the Medicines Act 1968.

- 3 All of the drugs were antibiotics save for Oxytocin, which is a uterine stimulant. Some of the antibiotics were injectable. All were UK licensed products save for Leo Yellow, which is not licensed in the UK (but apparently is licensed in the Republic of Ireland). Shanelle Veterinary Limited, a company in the Republic of Ireland, supplied all.
- 4 The Committee determined that Mr O'Hare acted illegally and in breach of his professional duties but that he should not be struck off. They did not admonish or reprimand him.

Documents

- 5 The following documents were before the meeting:
 1. Transcript of hearing 13th May 2005;
 2. Report by Bevan Brittan LLP and O'Reilly Stewart prepared 27th May 2005;
 3. PSNI Notice of Inquiry dated 01st April 2005;
 4. Certificate of Conviction dated 23rd April 2004;
- 6 The exhibits before the Committee were available to the meeting. It was noted that the PSNI Notice of Inquiry dated 01st April 2005 indicated that one of the enclosures was "a copy of the Regulations which govern the procedure of the Committee." A copy of the Regulations had been requested from the PSNI but it was not available at the time of the meeting.
- 7 The members considered that in the absence of the document referred to above the meeting should proceed.

Conflicts of Interest

- 8 Mr North declared that he was an observer for the PSNI but had had no involvement in Mr O'Hare's case, so that the issue did not give rise to a conflict.
- 9 Mr Clarke and Mr Wood declared that they had been briefly introduced to the Chairman of the Statutory Committee of the PSNI at a recent function that was unrelated to Mr O'Hare or his case, so that the issue did not give rise to a conflict.

- 10 The above aside, the members declared no conflicts of interest and none was apparent.

Jurisdiction

- 11 The members noted that the purpose of the meeting was to decide whether to exercise its statutory discretion to refer to the High Court under Section 29 of the NHS Reform and Health Care Professions Act 2002 (“the 2002 Act”) the Committee’s decision in respect of Mr O’Hare.
- 12 It was agreed that the CHRE had the power to refer this case under Section 29 (4) (b) of the 2002 Act if they considered that the decision of the Committee was unduly lenient and it was desirable so to refer for the protection of members of the public.

Matters noted by the meeting

- 13 The only statutory sanction available to the Committee would have been to strike Mr O’Hare off the Register. The meeting noted that the Committee does not appear to have a statutory power to admonish or reprimand, but it was understood that the Committee has issued admonishments and reprimands to other practitioners in the past.
- 14 The Committee found that Mr O’Hare had breached his professional code of ethics and had been found guilty of a criminal offence.
- 15 The Committee found that Mr O’Hare had stockpiled medicines, indicating that the intention to sell them was pre-meditated.
- 16 The Committee found that Mr O’Hare not only dispensed prescription only medicines without a prescription, but also he dispensed an unlicensed product (Leo Yellow).
- 17 The Committee found that there was a risk that drugs would enter the food chain because there was no enforceable withdrawal period for the animals that received them.
- 18 The Committee found that there was the risk that the drugs would enter the environment, adversely affecting antibiotic resistance.
- 19 The Committee found that the medications were dispensed unlabelled and veterinary surgeons would have been unaware of the medications when treating animals to which they were administered.

- 20 The Committee heard evidence in mitigation that included approving references and evidence from Mr O'Hare of his commitment to the community.

Members' consideration

- 21 The meeting considered the issue of public protection.
- 22 The meeting considered that as the drugs sold by Mr O'Hare had been obtained for animals, any risk to the public would be indirect. There was no evidence to suggest that the general public would have used the drugs themselves.
- 23 The meeting considered that livestock and milk carrying traces of the drugs sold by Mr O'Hare would be extremely unlikely to enter the food chain, as abattoirs would not be prepared to purchase meat and dairies would not be prepared to purchase milk if traces of the drugs were detected. In the circumstances the meeting considered that selling the drugs did not represent a risk to the public. It would not have been in a farmer's interests to sell their livestock or milk whilst traces of the drugs could be found in the animals.
- 24 The meeting considered the drugs sold by Mr O'Hare were available by prescription in order to limit the risk of the drugs entering the environment, so that antibiotic resistance in the human population might be adversely affected. The meeting considered that the quantity of drugs sold by Mr O'Hare was so small that the antibiotic resistance would not have been affected.
- 25 The meeting considered that the drugs Mr O'Hare had sold were well known and in common use throughout the agricultural community.
- 26 The meeting considered that the case did **not** raise the issue of public protection either in terms of the extent to which Mr O'Hare's actions caused or could have caused direct or indirect harm to the public or in terms of maintaining the reputation of the profession and public confidence in regulation.
- 27 The meeting considered the issue of undue leniency. Mr O'Hare was in breach of criminal law and his code of ethics. Having been susceptible to pressure in this case, he might be susceptible to pressure in other cases. But other than striking off, no other sanction was available. The meeting considered that it would have been unduly harsh to strike off Mr O'Hare. The flaw in the system was the inability of the Committee to ensure that he did not repeat the same or similar misconduct without striking him off.

Conclusions

- 28** The meeting agreed that it is not desirable for the protection of members of the public for the Council to refer the case to the High Court under Section 29(4)(b) of the 2002 Act.

- 29** The meeting concluded that the case should not be referred to the High Court.

.....

Dated2005

Nigel Clarke (Chair)

Time of commencement of meeting 10.10
Time of conclusion of meeting 11.05