

**Health Professions Council**

**CONDUCT AND COMPETENCE COMMITTEE HEARING**

**Notice of Decision and Order**

Date of Hearing: 12<sup>th</sup> May 2004

Name of Registrant: Mr. Adam Smith

Registration No.: RA12345

Panel: Mrs. Minnie Mouse (Chairman), Mr. Donald Duck, Dr. Jiminy Cricket

Legal Assessor: Mr. Clarence Darrow

Hearing Officer: Miss Kelly Johnson

Representation: Mr. Smith was present and was represented by Mr. Horace Rumpole, Counsel, instructed by Sue, Grabbitt and Runne Solicitors

The Council was represented by Mr. Perry Mason, Solicitor.

**Allegation(s)**

That your fitness to practise is impaired by reason of conviction for a criminal offence in that you were on 27<sup>th</sup> March 2004 at Trumpton Magistrates Court convicted of making 20 indecent photographs of a child contrary to the Protection of Children Act 1978, and at Trumpton Crown Court sentenced to a three year community rehabilitation order and to have your name placed on the sex offenders register for five years.

**Decision:**

The Committee heard that you were convicted of making 20 indecent photographs of a child contrary to the Protection of Children Act 1978. That conviction occurred on 27<sup>th</sup> March 2004 at Trumpton Magistrates Court and is set out in the conviction certificate which the court sent to the Health Professions Council. That court then referred your case to Trumpton Crown Court for sentencing and the Crown Court sentenced you to a three year community rehabilitation order and to have your name placed on the sex offenders register for five years. That sentence is also set out in the conviction certificate sent to the Council.]

You admitted the conviction and also informed the Committee that you had pleaded guilty to the offences at the time of your trial.

Although the offences were not committed in the course of your professional duties as a radiographer, the Committee regards involvement in child pornography as an extremely serious matter. Members of the public place their trust in health professionals and are entitled to assume that health professionals will conduct themselves in a professional manner. Offences of this kind undermine public confidence in the health professions. They are offences of a type that the Committee considers to be of grave concern.

**DECISION: The Committee finds the allegation to be well founded.**

In determining what, if any sanction to impose, the Committee has taken account of submissions made on your behalf: that you are of previously good character; that the offences occurred over a short period of time and that there is no evidence of further involvement by you in this kind of behaviour; and that you are receiving counselling and are participating in the Sex Offenders Programme.

However, the Committee has also taken account of the evidence in the witness statement of Detective Constable Jones from Trumptonshire Police that the offences were at the serious end of the scale of gravity for such offences (as laid down by the Court of Appeal in *R. v Oliver*).

The Committee has considered each of the sanctions available to it and has decided that to take no further action or to impose a caution or conditions of practice in this case would not adequately protect the public.

Consequently, the remaining options are suspension or striking off. Taking account of the steps which you are taking to address your conduct, the Committee reached the conclusion that, although you are at the threshold of striking off, it would not be appropriate. Accordingly, the Committee has decided to suspend your registration for a period of one year. In all the circumstances we believe this to be a proportionate sanction.

**ORDER: That the Registrar be directed to suspend the registration of Adam Smith for a period of one year.**

The Committee will review your case at a further hearing which will be held before your suspension ends. At that hearing it will consider whether any further action needs to be taken in relation to your registration. You will be informed of the date and venue of that hearing and will be entitled to attend and put your case. It is for you to determine what evidence you wish to put before that hearing but, it is likely that the Committee will wish to consider evidence of your participation in the Sex Offenders Programme, your conduct during the period of suspension and the steps you have taken to keep your professional knowledge up to date.

**Right of Appeal**

You may appeal against the Committee's decision and the order it has made against you.

Articles 29(9), (10) and 38 of the Health Professions Order 2001 provide that you have 28 days from the date that this notice was served on you to make such an appeal to the appropriate court. In this case the appropriate court is the High Court of Justice in England and Wales. The order set out above will not take effect until that appeal period has expired or, if you appeal during that period, until that appeal is withdrawn or disposed of.

**Health Professions Council**

**CONDUCT AND COMPETENCE COMMITTEE HEARING**

**Notice of Decision and Order**

Date of Hearing: 12<sup>th</sup> May 2004

Name of Registrant: Adam Smith

Registration No.: PH12345

Panel: Mrs. Minnie Mouse (Chairman), Mr. Donald Duck, Dr. Jiminy Cricket

Legal Assessor: Mr. Clarence Darrow

Hearing Officer: Miss Kelly Johnson

Representation: Mr. Smith did not appear and was not represented

The Council was represented by Mr. Perry Mason, Solicitor.

**Allegation(s)**

That your fitness to practise is impaired by reason of misconduct in that you in March 2004 at Ballyhoo District General Hospital engaged in inappropriate sexual conduct towards a patient, Mrs. AB.

**Decision:**

Mr. Smith was not present at the hearing nor was he represented. The Committee is satisfied that, in accordance with the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003, notice of these proceedings was correctly served on Mr. Smith. In the circumstances, the Committee decided that it was appropriate to proceed with the case without Mr. Smith being present or represented.

It was established that during March 2004 you were employed as a physiotherapist at Ballyhoo District General Hospital and that, during that time, Mrs. AB was one of your patients.

Mrs. AB said in her evidence that, during her treatment by you on various dates during March 2004, you engaged in inappropriate sexual conduct towards her, including touching her breasts, making lewd comments to her and asking her to touch your genitalia.

Further, Mrs. AB said that on the first occasion that you touched her breasts she was unsure what action to take and had therefore discussed the matter with her work colleague Miss DC.

Mrs AB went on to say that on a subsequent visit to the hospital, when she was accompanied by Miss DC, you refused to permit Miss DC to be present when you treated Mrs. AB and then, in the course of that treatment, commented on the size of Mrs. AB's breasts and asked her to touch your genitals.

We found Mrs. AB to be a credible witness and accepted her version of events.

Miss DC's evidence was that Mrs. AB had complained to her about you touching her breasts and that Miss DC had suggested to Mrs. AB that she accompany her on her next visit to the hospital and did so. Miss DC said that she asked you to allow her to remain with Mrs. AB whilst you treated her but that you refused the request saying that it was inappropriate.

We also found Miss DC to be a credible witness and accepted her version of events.

Although you were not present or represented at the hearing we do have your written submission in which you "categorically deny these spurious claims".

Abusing patient's trust by making sexual overtures towards them in the course of treatment is a serious matter. The public places its trust in health professionals and, in return expects health professionals to act in an appropriate, responsible and professional manner. The first standard in the Council's Standards of Conduct Performance and Ethics states:

***"1. You must act in the best interests of your patients, clients and users.***

*You are personally responsible for making sure that you promote and protect the best interests of the people you care for. You ...must not exploit or abuse the relationship with a patient..."*

Making sexual advances towards patients falls far short of that standard and is a serious breach of a patient's trust.

**DECISION:                    The Committee finds the allegation to be well founded.**

In determining what, if any sanction to impose, the Committee has taken account of fact that you are of previously good character.

However, the Committee has also taken account of the fact that arose during the course of your professional duties, that you persisted in your behaviour even when your patient took steps to bring it to an end and that you have denied the allegations.

The Committee has considered each of the sanctions available to it. This is a very serious matter and we have decided that to take no further action, to impose a caution or impose conditions of practice in this case would be insufficient to protect the public.

Consequently, the remaining options are suspension or striking off. Taking account of your persistence, your failure to address your conduct and your lack of insight into what you have done, the Committee has reached the conclusion that suspension would not be appropriate. Accordingly, the Committee has decided to strike your name from the register. In all the circumstances we believe this to be a proportionate sanction.

**ORDER:**                   **That the Registrar be directed to strike Adam Smith off the register.**

### **Right of Appeal**

You may appeal against the Committee's decision and the order it has made against you.

Articles 29(9), (10) and 38 of the Health Professions Order 2001 provide that you have 28 days from the date that this notice was served on you to make such an appeal to the appropriate court. In this case the appropriate court is the High Court of Justice in Northern Ireland.

The order set out above will not take effect until that appeal period has expired or, if you appeal during that period, until that appeal is withdrawn or disposed of.

### **Interim Order:**

Although the above order does not have immediate effect, the Committee has the power to impose an interim conditions of practice order or interim suspension order on you, if it is satisfied that it is necessary to do so for the protection of the public, or is otherwise in the public interest, or is in your interests. Such an order has immediate effect and remains in place until the appeal period set out above expires, or , if you appeal, until that appeal is withdrawn or disposed of.

The Committee was very concerned by the evidence it has heard, and in particular your lack of insight into the harm to patients which behaviour of this kind can cause. The Committee heard further argument on this issue but takes the view that immediate action is needed for the protection of the public. Accordingly, the Committee has imposed an interim suspension order upon you to take immediate effect.

**ORDER:**                   **That, in accordance with Article 31(2)(a) of the Health Professions Order 2001 the Registrar be directed to suspend the registration of Adam Smith with immediate effect, such suspension to continue until the appeal period commenced by this notice has expired or, if an appeal is made during that period, until that appeal is withdrawn or disposed of.**

**Health Professions Council**

**CONDUCT AND COMPETENCE COMMITTEE HEARING**

**Notice of Decision and Order**

Date of Hearing: 12<sup>th</sup> May 2004

Name of Registrant: Adam Smith

Registration No.: CH12345

Panel: Mrs. Minnie Mouse (Chairman), Mr. Donald Duck, Dr. Jiminy Cricket

Legal Assessor: Clarence Darrow

Hearing Officer: Miss Kelly Johnson

Representation: Mr. Smith was present and represented himself assisted by Mr. Phil McAvity.

The Council was represented by Mr. Perry Mason, Solicitor.

**Allegation(s)**

That your fitness to practise is impaired by reason of lack of competence in that you failed, at various dates between November 2001 and March 2004, to keep proper records of patient treatment.

**Decision:**

You admitted that at all times during the dates set out in the allegation you were employed as a chiropodist by Dr. Marcus Welby in his general practice at Brigadoon.

The evidence of Dr. Welby is that, at various times during your employment, after he had referred patients to you, he raised concerns about the adequacy of the patient records or referral notes you passed to him. Similarly, he said that at various times during those dates he had referred patients to you but you has failed to inform him of the outcome or to update the patient's records appropriately.

In support of his evidence Dr. Welby produced (as Exhibits 'MW1' and 'MW2') redacted patient records showing clear references to patients being referred to you where your initials appear against later, very brief entries, such as "patient seen" or "done".

Dr. Welby was a credible witness and we accept his version of events. In your evidence you did not dispute anything Dr. Welby told us, but said that you kept records of treatment in a notebook as an *aide memoire* and, that over the years, this had been adequate for your practice. When asked by the Committee whether you would be submitting that notebook as evidence you said that it was no longer in our possession as it had inadvertently been destroyed.

You went on to say that you recognised that your record-keeping practices do not meet current standards, that you had allowed your standards to slide and that you should have heeded Dr. Welby's advice much sooner.

Maintaining accurate patient records is a fundamental part of practise for health professionals. The Council's Standards of Conduct, Performance and Ethics state that:

***“10. You must keep accurate patient, client and user records.***

*Making and keeping records is an essential part of care and you must keep records for everyone you treat or who asks for professional advice or services. All records must be complete and legible, and you should write, sign and date all entries.”*

Further, The Council's Standards of Proficiency for Chiropractors and Podiatrists state that a registrant must:

***“2b.5 be able to maintain records appropriately***

*- be able to keep accurate, legible records and recognise the need to handle these records and all other clinical information in accordance with applicable legislation, protocols and guidelines”*

Failure to keep proper patient records can have grave consequences for patients and for professional colleagues. It places the public in danger and for that reason is regarded as a serious matter by the Committee.

**DECISION:                    The Committee finds the allegation to be well founded.**

In determining what, if any sanction to impose, the Committee has taken account of the submissions made on your behalf: that you are of previous good character and that you are a experienced and capable practitioner in all other respects.

Your statement that you have allowed standards to slide suggests that you do recognise how important patient records are and indicates to us that this is a lapse which is capable of remediation.

We have also taken account of Dr. Welby's submission that you are an otherwise capable practitioner and his offer to provide assistance to resolve this matter.

The Committee has considered each of the sanctions available to it and has decided that to take no further action or to impose a caution would not adequately protect the public.

Given your recognition of the problem, your willingness to address it and the support offered by Dr. Welby we believe that conditions of practice would be appropriate in this case. We do not believe that the remaining option, of suspension (as this is a competence allegation the option of striking off is not available to us) would be appropriate.

Accordingly, the Committee has decided to impose specified conditions of practice upon you for a period of one year. In all the circumstances we believe this to be a proportionate sanction.

In drawing up conditions of practice the Committee seeks to ensure that the conditions are appropriate, realistic and verifiable. The conditions we are imposing on you are in three parts.

First we require you to undergo refresher training in patient record-keeping so that you meet the relevant Standards of Proficiency for your profession. We are not prescriptive about what form this training should take, but it should be completed (and evidence of that fact provided to us) within three months of our order taking effect.

Secondly, to ensure those standards are applied in practice, for one year from the date our order takes effect you are to submit sample records to Dr. Welby for audit on a quarterly basis and arrange for him to send us a copy of each audit report. This condition imposes a burden on Dr. Welby but it is one he has agreed to accept.

Thirdly, as the previous condition is specific to your current employment, you must advise us promptly if you change employment at any time whilst the order is in place. In that event the order may need to be reviewed.

**ORDER:**                   **That from the date that this order takes effect (“the operative date”) Adam Smith shall comply with the following conditions or practice:**

- 1. within three months of the operative date, he shall undertake, and provide evidence to the Committee that he has undertaken, refresher training in keeping patient records which meet the requisite standards of proficiency;**
- 2. three months from the operative date and at quarterly intervals thereafter for a period of one year, he shall submit to the Committee an audit report from Dr. Marcus Welby confirming that he has audited a sample of Mr. Smith’s patient records and reporting on whether or not they are being properly maintained;**
- 3. for a period of one year from the operative date, promptly inform the Committee if he ceases to be employed by Dr. Welby.**



The Committee will review your case at a further hearing which will be held before the conditions of practice end, or sooner if you cease to be employed by Dr. Welby.

At that hearing it will consider whether any further action needs to be taken in relation to your registration. You will be informed of the date and venue of that hearing and will be entitled to attend and put your case. It is for you to determine what evidence you wish to put before that hearing but, it is likely that the Committee will wish to consider evidence of your compliance with the conditions of practice.

### **Right of Appeal**

You may appeal against the Committee's decision and the order it has made against you.

Articles 29(9), (10) and 38 of the Health Professions Order 2001 provide that you have 28 days from the date that this notice was served on you to make such an appeal to the appropriate court. In this case the appropriate court is the Court of Session

The order set out above will not take effect until that appeal period has expired or, if you appeal during that period, until that appeal is withdrawn or disposed of.



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