Report of the Health Committee to the Council of the Pharmaceutical Society of Ireland following an Inquiry held pursuant to Part 6 of the Pharmacy Act 2007.

Registered Pharmacist: [redacted]

Registration Number: [redacted]

Complaint Reference: 484.2018

Date(s) of Inquiry:
May 25th 2021 & May 6th 2022

Members of Inquiry Committee:
Ms Ann Sheehan, Chair, (non-pharmacist)
Mr Martin Hynes (pharmacist)
Ms Jillian van Turnhout, (non-pharmacist)

Legal Assessor: Mr Nicholas Butler S.C.

Medical Assessor: Dr Ailis Ni Riain

PSI
The Pharmacy Regulator
An Rialtóir Cógaisíochta

Appearances

For the Registrar:
Mr Eoghan O' Sullivan B.L.
Ms Zoe Richardson
Fieldfisher Solicitors

For the Respondent: Mr Breffini Gordon, B.L.

1. Subject Matter of the Complaint

The Health Committee held an inquiry in relation to the complaint against [redacted] on the grounds of alleged professional misconduct and impairment of [redacted] ability to practise because of a physical or mental ailment, and emotional disturbance or an addiction to alcohol or drugs.

2. Allegations

A. That you, whilst you were a Registered Pharmacist:

1. Presented to [redacted] the photocopy prescription which appears at Appendix A, which is a photocopy of an original prescription for "Tramadol 50mg x 100 Repeat x 1" which appears at appendix B and was dispensed on 13 November 2015 and 12December 2015 (the original prescription) and obtained the following supplies of Tramadol, in circumstances where you know or ought to have known that it was a photocopy of the original prescription:

    a) Supply of 100 Tramadol 50mg on 2 December 2015; and / or
    b) Supply of 100 Tramadol 50mg on 18 January 2016; and/or
    c) Supply of 80 Tramadol 50mg o 23 January 2016; and/or

2. On or about 11 December 2015 presented to [redacted] the photocopy prescription which appears in Appendix C, which is a photocopy of the Original Prescription at Appendix B, and obtained a supply of 100 Tramadol 50mg, in circumstances where you knew or ought to have known that it was a photocopy of the original prescription; and/or

B. That you have an impairment of your ability to practise as a registered pharmacist because of a mental ailment, and/or and emotional disturbance by reason of addiction to/or alcohol and or drugs.

AND FURTHER by reason of one or more of the allegations and/or sub-allegations set out at above you are guilty of professional misconduct in that you acted in a manner that is:

(i) Infamous and/or disgraceful in a professional respect; and/or;
(ii) Involves moral turpitude and/or fraud and/or dishonesty of a nature or degree which bears on the carrying on of the profession of a pharmacist; and/or
(iii) a breach of Principles 1 and /or 4 of the Code of Conduct for Pharmacists;

3. Evidence and Submissions

The Committee heard evidence from the following witnesses on behalf of the Registrar:

i. Ms Amanda Nevin Authorised Officer, PSI

ii. Mr Brendan Kerr MPSI, Expert Witness

iii. Professor Abbie Lane, Consultant Psychiatrist

The Committee also considered the following documentary exhibits:

1. Code of Conduct
2. Draft Conditions
3. Transcripts of the Committee hearings on 15 July 2020 (the callover hearing) and 27 January 2021

Standard of Proof:

The Committee applied the criminal standard of proof throughout, i.e., beyond reasonable doubt.

4. Findings of the Committee

Allegation A

1

Presented to [redacted] the photocopy prescription which appears at Appendix A, which is a photocopy of an original prescription for "Tramadol 50mg x 100 Repeat x 1" which appears at Appendix B and was dispensed on 13 November 2015 and 12 December 2015 ("the Original Prescription") and obtained the following supplies of Tramadol, in circumstances were you know or ought to have known that it was a photocopy of the Original

Prescription:

a) Supply of 100 Tramadol 50mg on 2 December 2015; and / or

b) Supply of 100 Tramadol 50mg on 18 January 2016; and/or

c) Supply of 80 Tramadol 50mg on 23 January 2016; and/or

Finding of Fact:

The Committee found this allegation to have been proven as to fact.

Reasons:

1. These facts were admitted by [redacted]
2. Ms Nevin's Report Tab B of Core Book and the statements admitted into evidence.

3. Mr Brendan Kerr Evidence and Expert Report Tab 13 Core Book 1

Finding of Professional Misconduct:

The Committee found that these facts amounted to Professional Misconduct.

Reasons:

1. [redacted] admitted that these facts amounted to Professional Misconduct.
2. The misconduct was dishonest and fraudulent.
3. The Committee accepted the evidence of Mr Kerr, the Expert Witness, that in the Committee's view, these acts amounted to Professional Misconduct as defined in Section 33 of the Act. Specifically, [redacted] acted in a manner that was:

(i) Infamous and/or disgraceful in a professional respect (notwithstanding that, if the same or like act, omission or pattern of conduct were committed by a member of another profession, it would not be professional misconduct in respect of that profession).

Applying the principles laid down in re *Lynch and Daly, [1970] IR.1*, this was conduct involving:

> *"an element of conscious wrongdoing or the doing of something which a professional person, by reason of his training, must have realised would cause him to incur shame in the eyes of his professional colleagues".*

(ii) A breach of Principle One and Principle Four of the Code of Conduct for Pharmacists.

The Committee in their deliberations examined Principle One and Four and found that the [redacted] had seriously breached the following;

Principle One

"The practice by a pharmacist of his/her profession must be directed to maintaining and improving the health, wellbeing and safety of the patient. This is the primary principle, and the following principles must be read in light of this principle. Ensure the health of the patient is their primary focus Provide a proper standard of practice and care to those for whom they provide professional services."

Principle Four

"A pharmacist must conduct himself/herself in a manner which enhances the service which their profession as a whole provides to society and should not at in a way which might damage the good name of their profession. In order to fulfil his/her obligations under this principle a pharmacist should:

- Work effectively with other healthcare individuals.
- Practise within relevant legislative and professional regulatory guidance.
- Accept responsibility for all his or her professional activities and for all activities undertaken under direct supervision.
- Report and make disclosures to relevant authorities on matters affecting or having the potential to impact on patient safety and wellbeing.
- Endeavour to ensure that each patient is assisted in a manner which facilitates the care and treatment that they may be receiving from another recognised healthcare professional.
- Respect the integrity, skills and expertise of colleagues and other healthcare professionals and maintain and promote professional relationships to ensure patients' needs are met.
- Disclose any concerns adversely affecting patient care and safety to the PSI".

The Committee identified serious breaches of the Code, specifically in the following areas regarding patient safety:

Whereby [redacted] in this case presented as the patient he Committee noted the evidence of Ms Amanda Nevin, (transcript page 54 update corebook 6/6).

" Ms Nevin describes the prescriptions written by [redacted], Ms Nevin also describes the reconciliation exercise going through quantities of drugs supplied and cross referenced with maximum licensed dosages. Further evidence regarding the dosages of Tramadol were also described to the committee stating that Ms Nevin identified that [redacted] received 133% of the maximum licenced daily dose supplied in relation to Tramadol. The Committee listened to further evidence from Ms Nevin in relation to photocopied prescriptions. Evidence was also given as to how the photocopied script was relied upon for three different dispensing of Tramadol Corebook 1/2 tab 8. Evidence was presented by Mr Kerr in relation to Principle 1 of the code as follows:, "Obligations and privileges and those privileges are to be part of a profession that is self-regulated and self-regulated in the focus of quality and safety of the supply of medicines to patients" - Page 67 updated Core Book 6/6.

Mr Kerr also continued on to say "to present a document which was not a valid prescription is, in my view outrageous. It utilises the skill and knowledge and professionalism that [redacted] should have used correctly as a pharmacist in order to obtain an illicit supply of medications" (updated Core Book 6/6 page 67)."At principle 4 pharmacist lacked in [redacted] conduct in amanner which enhances the service of

the profession as a whole and in a way that would not damage the name or reputation of the profession. I think that the average member of the public would be horrified to think that a pharmacist might use [redacted] professional skills again to illicitly obtain a supply of medicines that wasn't authorised by a doctor". Mr Kerr then went on further to say "that [redacted] deceived both the dispensing pharmacists and again [redacted] deceived the doctor who was responsible fundamentally for holistically [redacted] healthcare."

In listening to the evidence of Ms Nevin and Mr Kerr the Committee noted that there was a breach of the code of conduct in both Principle One and Principle Four.

Based on the evidence referred to, the Committee are of the view that [redacted] professional misconduct is very serious. The misconduct of presenting a photocopied prescription to obtain a controlled drug in this case Tramadol, and to illicit medication which was not authorised by a doctor. The Committee also viewed the behaviour as being dishonest. [redacted] was dishonest with [redacted] fellow dispensing pharmacist by presenting the photocopied prescription and also being dishonest with [redacted] GP by illicitly obtaining medication that was not being prescribed. The Committee took the view that [redacted] had expert knowledge as a pharmacist about the medication and knew the risks associated with the medication. The Committee concluded that this behaviour is at the serious end of professional misconduct. The Committee in the context of the definition of misconduct considered the degree of risk and noted that [redacted] conducted [redacted] in a deceitful manner by presenting a photocopied prescription on more than one occasion to other pharmacists and in doing so [redacted] also deceived [redacted] GP by illicitly obtaining medication that was not prescribed to [redacted]

Allegation A.2

On or about 11 December 2015 presented to [redacted], [redacted] the photocopy prescription which appears at Appendix C of the Notice of Inquiry, which is a photocopy of the Original Prescription at Appendix B of the Notice of Inquiry, and obtained a supply of 100 Tramadol 50mg, in circumstances where you knew or ought to have known that it was a photocopy of the original prescription; and/or

Finding of Fact:

The Committee found this allegation to have been proven as to fact.

Reasons:

The reasons for this finding are the same as those for the findings of fact in relation to Allegation A.1.

Finding of Professional Misconduct:

The Committee found that this fact amounted to Professional Misconduct

Reasons:

The reasons for this finding are the same as those for the findings of Professional Misconduct in relation to Allegation A.1above. Again, Professional Misconduct was admitted.

Allegation B

That you have an impairment of your ability to practise as a registered pharmacist because of a mental ailment, and/or and emotional disturbance by reason of addiction to/or alcohol and or drugs.

Finding:

The Committee found this allegation to have been proven beyond reasonable doubt.

Reasons:

The Committee heard evidence from Professor Lane based on her reports dated 21.02.2020 and (Core Book 1, Tabs 16 pages 436-441) and Report dated 21.09.2021 (updated Core Book 1/6 pages 3 – 5). Professor Lane's evidence and report clearly states

> "*I felt that* [redacted] *and examination and the notes were consistent with two psychiatric diagnoses. One, multiple drug use mainly opiate dependency and secondly Bipolar Affective Disorder and these would be recognised psychiatric illnesses."*

The report of February 2021 found that [redacted] was in treatment and was in the early stages of recovery and in the opinion of Professor Lane not currently fit to work as a pharmacist (Core Book 1 /2 Tab 16 page 440). The report also states that there is a significant risk of relapse of mood and substance misuse and of suicide. Professor Lane's Report dated 21.09.2021 states that "[redacted] has maintained [redacted] recovery for the past two years and has been helped by the addition of anti-psychotic medication. The report continues on to say

> *"that* [redacted] *is currently under the care of a specialist Dual Diagnosis Service and is now receiving combined treatment for* [redacted] *mood and addiction ms. While the progress over the past two years is impressive, the risk of relapse with both Bipolar Affective Disorder and Drug and Opiate Dependency is considerable and for this reason* [redacted] *will need to be monitored and remain in treatment for the foreseeable future*".

The Committee listened to the evidence given by Professor Lane and in doing so felt there were questions and issues regarding [redacted] ability to work safely as a pharmacist. The concerns raised were included external controls in the monitoring of [redacted] that there would also be a need for drug screening, there were concerns regarding the access to controlled drugs and further issues regarding supervision should [redacted] return to work. The Committee felt that they needed reassurance regarding public safety should [redacted] return to work today or tomorrow.

These concerns were addressed to Professor Lane via Dr. Ailis Ni Rian (Medical Advisor to the Committee) as per the Transcript Friday, May 6th 2022 page 27:

> *"[redacted] has a very serious --[redacted] has a serious illness, [redacted] is currently well but those safeguards would be vital in terms I suppose, supporting [redacted] in [redacted] recovery and wellbeing but also ensuring that [redacted] is not a risk to patient safety*. "

The Committee raised issues regarding the level of monitoring the length of time required to ensure both patient safety and protection of the public.

Professor Lane in her evidence[1] stated that

> "*[redacted] has two relapsing illnesses and, if you like, we are a snapshot at the moment where [redacted] has done well, [redacted] has done lots of work, [redacted] medication has been adjusted and over the last two years [redacted] has been very well, but [redacted] has, I suppose , a remitting, relapsing illness, but [redacted] also had an illness that [redacted] history would suggest has been at the more severe end of the scale. So, taking all of that, you know, if [redacted] stays well and if [redacted] maintains the, I suppose structures around [redacted] that are supporting [redacted] wellbeing, then [redacted] should be able to function safely as a pharmacist, but it is vital and dependent upon [redacted] managing [redacted] health as you said in the manner with objective supervision, medication, attendance at both addiction services and psychiatry*."

The Committee then had questions regarding monitoring and measures that needed to be put in place should [redacted] return to practice as a pharmacist and the Committee asked Professor Lane to make recommendations or suggestions regarding the frequency of monitoring and what should [redacted] be tested for and how often should reports be sought from [redacted] treating clinicians and for how long. Professor Lane went on to explain that the monitoring would be complex and due to the fact that [redacted] is on a medication called "Flurazepam" She stated:

[1] At page 27 of transcript 6.5.2022 folios 10 to 23

"it is not completely straightforward. Like it is not a situation where somebody is completely off addictive substances, because [redacted] is still on Flurazepam 30mg at night. But it would mainly be the opiates that you would be , we would be looking at, and that , as I say would be on a four-to six weekly basis."[2]

Additional Matter which the Committee considers appropriate to include in its Report under section 47(3) of the Act.

Recommendation as to sanction.

At the conclusion of the evidence on day 2, Mr O'Sullivan, on behalf of the Registrar, reminded the Committee that [redacted] had been registered as a pharmacist at the time of the events the subject of the complaint but that [redacted] registration had been cancelled subsequently due to non-payment of retention fees. Mr O'Sullivan indicated that the statutory power of the Council to decide on a sanction in the event of one or more adverse findings by the Committee may be affected by this registration history. The Committee considered the submissions of Mr O'Sullivan and of Mr Gordon in this regard and the advice of Mr Butler given in the presence of the parties (Transcript, Day 2, p.56). Having done so, it concluded that in circumstances where any decision as to sanction under the Act was one for the Council (having considered all relevant matters including any Committee recommendation as to sanction), the existence or extent of the Council powers under the Act in this regard were probably matters to be addressed by the Council itself and that there was no role, under the Act or otherwise, for the Committee to make findings of law or to express any view on these legal issues. As the invariable practice of the Committee is to recommend appropriate sanctions when adverse findings are made, it decided to do so in this instance, for the assistance of the Council and on the basis, which has yet to be determined and on which the Committee expresses no view, that the Council has the full range of sanction decisions open to it under section 48 of the Act.

Sanction recommendation

The Committee recommends the cancellation of [redacted] registration.

Reasons:

The Committee carefully considered and followed the legal principles governing sanction decisions and the PSI Sanctions Guidance and Conditions that may be imposed following disciplinary inquiry. In terms of the professional misconduct findings, the sanction should, as a paramount consideration,

[2] Transcript of hearing 6.5.2022 page 28(ff27 to 30) ,29 (ff 1-2)

protect the public. The purpose of imposing a sanction is public protection, the declaring and upholding of professional standards, the maintenance of public confidence in the profession and the maintenance of public confidence in regulation. The primary aim is the protection of the public and not the punishment of the practitioner.

The Committee noted the aggravating and mitigating factors.

The aggravating factors included the nature and extent of [redacted] professional misconduct, involving significant fraud, dishonesty and misuse of drugs. These features have been addressed earlier in this report.

Mitigating factors include [redacted] admissions and cooperation with the Inquiry process, the fact that [redacted] has not previously faced allegations before the PSI, [redacted] protracted illness, [redacted] commitment to [redacted] recovery and the impressive progress [redacted] has made in recent times.

The paramount consideration of protecting the public is particularly relevant to a sanction recommendation and decision in this case because of the nature and extent of the professional misconduct and the nature and history of [redacted] impairment. Consideration of any sanction which would allow [redacted] exposure or access to drugs must therefore be approached with the greatest care and the impairment in particular for the protection of the public and that is because of the nature and extend of the misconduct the committee highlights the risk where [redacted] could be exposed and would have access to drugs. The possibility of a relapse and the misuse of drugs during a relapse is considerably high and that possess an inherent risk to the public and to the profession. Dr Ni Riain in her questions to Professor Lane addressed the concerns around restrictive practice and it was also clear in Professors Lane's evidence that should [redacted] return to work as a pharmacist that this would only be possible with a comprehensive range of safeguards that would need to be put in place which would include supervision and drug testing (transcript page 38, Day 2 May 6th, 2022).

In line with the sanction guidance the Committee looked at the possibility that if [redacted] was to return to practice [redacted] would be subject to conditions. The Committee took the view that such conditions would not be practical. The Committee did consider if [redacted] was to work in a non-pharmacy role example advisory role, allowing [redacted] to use [redacted] qualifications without working around drugs or access to drugs the committee again concluded in these circumstances to impose conditions would be unrealistic, would not be proportionate and are forced to cancel [redacted] registration.

Consideration was also given to the evidence presented by Mr. Kerr "to present a document which was not a valid prescription is, in my view outrageous. It utilises the skill and knowledge and professionalism that [redacted] should have used correctly as a pharmacist in order to obtain an illicit supply

of medications" dishonesty, premeditated abuse of trust and disregard for the law was further evidence given by Mr. Kerr (transcript 25 May 2021 pages 67 to 70). The Committee was of the view that [redacted] had breached the code of conduct Principle 1 and Principle 4:

"the recurrence is to my view alarming as I said four supplies obtained over the three pharmacies. And just the general deceit that was observed in [redacted] activities at that time had to be explicit, the core of the notice of inquiry relates to prescriptions that were dispensed in December 15 and January 16"

Mr. Kerr (transcript May 25, 2021, page 71) Report Mr. Brendan Kerr Core Book 1, Tab 13, page 419. The definition of professional misconduct for the purpose of this inquiry.

When the Committee reviewed the evidence around mitigating factors whereby [redacted] admitted to fact on allegation A (1) and A (1) B, [redacted] attendance on day 1 and [redacted] gave a reason for non-attendance on day 2 and the evidence to support serious mental health illness. The Committee also recognise [redacted] level of insight and have taken into consideration the fact that Professor Lane reviewed [redacted] medical records and had two conversations with [redacted] concluding that significant progress had been made and the committee view this commitment as being positive and insightful in addressing [redacted] illness. [redacted] continues with SMART Recovery and attends two meetings per week and one mental health meeting online per week and continues under the care of [redacted] GP [redacted] The committee also notes that [redacted] by [redacted] own account has been substance free for two years and [redacted] mood has remained stable.

The Committee considered in detail the evidence and submissions in relation to possible conditions that might be recommended by way of sanction. the Committee had to conclude that even with [redacted] most careful monitoring, supervision, the nature of the work as a pharmacist with constant access to drugs, the vital need for [redacted] to conform with external controls, the need to be screened and monitored, it would not be possible to formulate conditions which would be clear, realistic and workable for [redacted] to work safely as a Pharmacist.

These considerations lead the Committee to conclude that the only sanction it could recommend which would be proportionate and address the need to protect the public and have proper regard for all of the considerations discussed here, would be to recommend the cancellation of [redacted] registration. No other sanction, such as a suspension, with or without conditions at the conclusion of the specified period of suspension, can sufficiently protect the public interest, including reducing the risk of harm and maintaining public confidence in the profession and its regulation.

When deciding on sanction the Committee first considered admonishment or censure and took the view that this sanction would not be appropriate or an adequate sanction as it did not reflect serious misconduct. The committee discussions were led by protection of the public, maintaining confidence in the profession and upholding standards it should also be noted that the committee's primary aim is protection of the public and not the punishment of the practitioner. The Committee relied very much on the evidence they heard during the inquiry when discussing conditions and believed that attaching conditions would be unworkable based on the evidence presented by Professor Lane:

"[redacted] presently is not impaired, however, if treatment stopped then [redacted] may become impaired therefore the need for safeguards and controls need to be put in place, this in itself implies a potential risk to the public."

[redacted] should also be reminded that if [redacted] registration is canceled and [redacted] wishes to return to [redacted] career ~~of pharm~~acy that there is a provision in the legislation for [redacted] to apply to the Council for [redacted] registration with or without conditions at an appropriate time in the future.

Ann Sheehan Date: 18 August 2022

Chairperson Health Committee