

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

## Registered Pharmacy:

Ferrybank Pharmacy Limited trading as Ferrybank CarePlus Pharmacy

## Registration Number:

7532

## Complaint Reference(s):

468.2018

## Date of Inquiry:

20<sup>th</sup> December 2021.

## Members of Inquiry Committee:

Mr. Dermott Jewell, Chair, non-Pharmacist

Mr. Mark Kane, non-pharmacist

Ms Barbara O'Connell (Pharmacist)

## Legal Assessor:

Mr. Eugene Gleeson, SC

**For the Registrar:**

Mr. Frank Beatty, SC

Instructed by Ms. Zoe Richardson & Ms. Aisling Ray, Fieldfisher Solicitors.

**For the Registrant Pharmacy:**

Mr. Ronan Kennedy, SC

Mr. Marc Murphy, BL

Instructed by Mr. Andrew Vallely, Partners at Law Solicitors.

**In Attendance:**

Ms. Liz Kielty, Solicitor, PSI

Ms. Dena Keane, PSI

Ms. Anna Malone, PSI

Ms. Sarah-Kate Barnes, PSI

Mrs. Mary O'Meara

Mr. Mark Degnan, Deloitte

Mr. Matthew Brady, TrialView

Ms. Deirdre O'Malley, Logger

**Documentation and Media Considered:**

Exhibit 1: Core Book

## 1. Subject Matter of the Complaint

### Statutory inquiry under Part 6 of the Act in relation to complaints against:

- (a) McGrath & Connolly Limited trading at Wicklow CarePlus Pharmacy, registration number 7531, which was referred on the grounds specified in section 36(1)(b) of the Act;
- (b) O'Meara's Pharmacy Arklow Limited, trading as O'Meara's CarePlus Pharmacy, registration number 5736, which was referred under the grounds specified in section 36(1)(b) of the Act; and
- (c) Ferrybank Pharmacy Limited, trading as Ferrybank CarePlus Pharmacy, registration number 7532 which was referred on the grounds specified in 36(1)(b) of the Act.

## 2. Allegations

That Mr John O'Meara, being an employee and/or a pharmacy owner of Ferrybank CarePlus Pharmacy, Unit 1 Ferrybank Mall, Ferrybank, Arklow, Co. Wicklow (the "Pharmacy"):

- a. Caused and/or permitted one or more of the medications as specified in Appendix A, including prescription only medications and/or controlled drugs and/or unlicensed prescription medications, to be and/or to remain unaccounted for in Wicklow CarePlus Pharmacy, Unit 5 and 6, Supervalu Centre, Wicklow Town, County Wicklow ("Wicklow CarePlus Pharmacy") during the period 1 January 2017 to 22 October 2018, at a time when he was Superintendent Pharmacist of that Pharmacy; and/or
- b. Sourced and supplied and/or caused to be sourced and supplied to Mr O'Meara from Wicklow CarePlus Pharmacy one or more prescription only medications as specified in Appendix B, including one or more controlled drugs and/or unlicensed medications, in circumstances where there was no valid prescription to authorise any or all of the medications and/or the medications had not been prescribed for Mr O'Meara by a registered medical practitioner, at a time when he was Superintendent Pharmacist of that Pharmacy; and/or
- c. Failed to keep and/or maintain and/or cause to be maintained at Wicklow CarePlus Pharmacy an accurate and/or complete controlled drugs Register in respect of the controlled drug Ritalin for the period 1 June 2018 – 30 June 2018, in accordance with legislative requirements, at a time when he was Superintendent Pharmacist of that Pharmacy; and/or
- d. On or about 24 August 2018 had in his possession at his residential address, [REDACTED] a package containing in or about 1 gram of cocaine, a controlled drug; and/or

- e. On or about 24 August 2018, had in his possession at his residential address for the purpose of selling or otherwise supplying to other person(s) up to 1,700 x Alprazolam 1mg tablets; and/or
- f. On or about 24 August 2018 had and/or caused to have in his possession at his residential address one or more prescription only medications as specified in Appendix B, including one or more controlled drugs and/or unlicensed medications, in circumstances where;
  - i. it was inappropriate to do so; and/or
  - ii. no prescriptions had been presented to authorise the supply of one or more of these medications to Mr O'Meara; and/or
- g. Corresponded by message with one or more other persons, through the WhatsApp messaging platform, in which messages he offered and/or agreed and/or arranged to sell and/or supply prescription only medicines, including controlled drugs, to other persons, in circumstances where he knew and/or ought to have known that those persons did not have prescriptions to authorise supply; and/or
- h. Such further or other allegations as may be notified to you in advance of the Inquiry.

AND FURTHER by reason of one or more of the allegations and/or sub-allegations set out 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 above, Mr O'Meara, being an employee and/or a pharmacy owner of the Pharmacy has committed misconduct such that were Mr O'Meara to apply for registration as a pharmacist, the Council of the PSI would be likely to refuse to register him.

### **3. Applications**

Matters commenced with an application by Mr. Kennedy, under Section 42(2) of the Act, that the Inquiry would proceed other than in public.

There was agreement that, for administrative reasons, there were now three separate inquiries being heard together in respect of the three pharmacies which, on the 8<sup>th</sup> of October 2021, had, being deemed insolvent, Mr. Mark Degan of Deloitte appointed by the High Court as an examiner pursuant to Section 512(7) of the Companies Act 2014. This Committee was advised that this was an ongoing process but that progress, for a possible sale of the pharmacies by 14<sup>th</sup> January 2022, was ongoing.

This would mean that Mr. John O'Meara and his mother, Mary O'Meara, who was present at the Inquiry in her current role as director of the companies, would be removed from their roles. It was a precondition of the potential sale agreement that these proceedings would have concluded in advance of final agreement being reached.

In making his application, Mr. Kennedy requested the Committee consider that, in light of the well-publicised public inquiry into the actions of Mr. John O'Meara, that the public interest had been somewhat diluted.

His clients, as pharmacy entities, enjoyed separate legal personalities and were victims of Mr. O'Meara's personal wrongdoing. However, Mr. Kennedy did caveat that McGrath & Connolly Limited was in a different position to that of O'Meara's Pharmacy Arklow Limited and Ferrybank Pharmacy Limited. This was because McGrath & Connolly, trading as Wicklow CarePlus Pharmacy was used as a vehicle by Mr. O'Meara to commit some of his grievous wrongdoing.

It was Mr. Kennedy's respectful submission that publicity, at this stage, could have the potential to damage customer confidence of those who have used the pharmacies over the past three-year period as well as the reputation of the retail pharmacy businesses, notably, where a potential sale was in process.

Mr. Beatty advised that the Registrar was objecting to the application for privacy. Many of the grounds of Mr. Kennedy's application had been previously aired in detail, on a number of occasions, including before the criminal courts.

There was no detail that would emerge in the course of today's Inquiry that had not already been in the public forum. Commercial interests could not outweigh or displace the public interest. Importantly, the Committee must carry out its statutory duty regardless of what potential investors did or did not want.

Following advice from the Legal Assessor the Committee adjourned to consider the application. Noting the fact that all matters had been previously heard in public; that there were no new matters of evidence to be presented; that there was objection by the Registrar and that the primary consideration was toward the public interest, taking all matters and advices into account, the Committee's decision was not to accede to the application.

#### **4. Evidence and Submissions**

Mr. Beatty read all three Notices of Inquiry as they related to each pharmacy into the record.

Mr. Beatty, by way of summary, confirmed the agreement of Mr. Kennedy to:

- The Core Book being accepted into evidence without necessity for formal proof;
- The contents and the exhibits and the booklet of witness statements 1 to 16 being accepted;
- The expert report of Dr. McCrystal being accepted;
- The transcripts of the evidence of the 12<sup>th</sup> and 13<sup>th</sup> of October 2021 as accepted and in addition;
- The Committee's Report of December 11<sup>th</sup> was accepted to be put into evidence.

Upon completion he passed across to Mr. Kennedy who, as had been intimated earlier, had proposals, discussed with Mr. Beatty, to offer to the Committee.

Mr. Kennedy advised the Committee that there was agreement from the Registrar that O'Meara's Pharmacy Arklow, trading as O'Meara's CarePlus Pharmacy and Ferrybank Pharmacy Limited, Trading as Ferrybank CarePlus Pharmacy, both had a different standing and position and would be dealt with separately.

In this regard and in circumstances where the facts were undisputed, Mr. Kennedy advised his proposal was that the Committee consider exercising its power, under Section 46 of the Act.

Section 46 (1) provides that:

"A committee of inquiry may, in dealing with a complaint, request the registered pharmacist or the pharmacy owner to do one or more of the following as appropriate:

- i. to undertake not to repeat the conduct to which the complaint relates;
- ii. to undertake to attend specified educational courses, training, or other means of improving his/her competence to practice or carry out a retail pharmacy business;
- iii. to consent to undergo medical treatment; and
- iv. to consent to being admonished or censured by the Council."

*"So, in effect, I am inviting the Committee, with the consent of the Registrar, to request my clients as pharmacy owners to give undertakings in certain terms and, in my respectful submission, that meets the objective of protecting the public and it meets mischief in this case in circumstances where both of these two retail pharmacy businesses have been operating successfully over the past three years in circumstances where Mr O'Meara, who was a former director and superintendent pharmacist, has been excluded by virtue of the agreement between the registered pharmacies, Mr O'Meara and the PSI in circumstances where, in effect, there is no relationship between these pharmacies and the wrongdoing by Mr O'Meara, and the only connection between them is his status as a former director and superintendent pharmacist".*

*"There were no issues in respect of Ferrybank or Arklow Pharmacy"*

*"So, in my respectful submission, all things considered, undertakings would be appropriate in this case. If the Committee is minded to accept or request me to give undertakings and accept the undertakings, then that would effectively bring this matter to a conclusion.*

*In terms of the undertakings which I am respectfully suggesting to you, there has been significant discussion between myself and Mr Beatty on behalf of the Registrar in respect of these undertakings, and these undertakings are agreeable"*

Mr. Beatty confirmed the Registrar's support of the section 46 application and clarified the position that, were the Committee disposed to granting of the application, it would consist -

in relation to Ferrybank Pharmacy Limited and O'Meara Pharmacy Arklow Limited, - of making no finding, but inviting the undertakings identified by Mr Kennedy.

## **5. Standard and Burden of Proof**

The Committee made its findings on the criminal standard of proof - beyond reasonable doubt.

## **6. Decision of the Committee**

The Committee carefully considered the presentations, submissions and the advice of the legal assessor.

Having considered the detail of the application under Section 46(1) of the Act on behalf of Ferrybank Pharmacy Limited trading as Ferrybank CarePlus Pharmacy (registration No. 7532), the Committee requests the Registrant to agree to the following undertakings noting that the Registrar consents to this request being made:

Undertakings– Ferrybank Pharmacy Limited trading as Ferrybank CarePlus Pharmacy (7532), Unit 1 Ferrybank Mall, Ferrybank, Arklow, Co. undertake as follows:

1. Not to repeat the conduct complained of, namely not to permit Mr John O'Meara, him being the subject of a conviction triable on indictment and having committed misconduct within the meaning of Section 36(1)(b) of the Pharmacy Act 2007, to have any direct or indirect role or involvement in the management and/or operation and/or running of either Pharmacy in any capacity, to include as a Director of Ferrybank Pharmacy Limited or O'Meara's Pharmacy Arklow Limited or as an employee of those companies or any other such company as may be in ownership of the Pharmacy's at those or other addresses.
2. Not to permit Mr John O'Meara to hold keys or to access the Pharmacy premises of either Pharmacy.
3. That the Directors of the Pharmacy undertake not to not permit themselves to be subject to any direct or indirect influence or input from Mr O'Meara in the exercise of the management, and/or operation and/or running of the Pharmacy's and the exercise of their directorial duties.
4. That a Director of the Pharmacy will provide written confirmation, at quarterly intervals, that these undertakings have been adhered to.
5. That the Superintendent and Supervising Pharmacist of the Pharmacy will be notified of these undertakings.
6. That, in the event there is any non-compliance with these undertakings, a Director of the Pharmacy will notify the PSI within one day of such non-compliance.
7. These undertakings will remain in place until such time as the Pharmacy may be the subject of a sale which would trigger the cancellation of the registration of the Pharmacy, if that should occur.

**Mr. Kennedy**, recorded formal confirmation to the Committee, on behalf of his clients, of their acceptance of the undertakings.

**Signed:**

A handwritten signature in blue ink, appearing to read 'Dermott Jewell', with a long horizontal flourish extending to the right.

**Dermott Jewell – Chairperson**

**Dated:** 14th March 2022 .