

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:

McGrath & Connolly Limited, trading as Wicklow CarePlus Pharmacy

Registration Number:

7531

Complaint Reference(s):

468.2018

Date of Inquiry:

20th 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

Appearances:

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 as 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 CarePlus 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

- 1. That Mr John O'Meara, being an employee and/or a pharmacy owner of Wicklow CarePlus Pharmacy, Unit 5 and 6, Supervalu Centre, Wicklow Town, County 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 the Pharmacy during the period 1 January 2017 to 22 October 2018 at a time when he was the Superintendent Pharmacist of the Pharmacy; *and/or*
 - b. Sourced and supplied and/or caused to be sourced and supplied to Mr O'Meara from the 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 the 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 the Superintendent Pharmacist of the Pharmacy; *and/or*
 - d. On or about 24 August 2018 had in his possession at his residential address 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, [REDACTED] 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*
2. That McGrath and Connolly Limited, being a pharmacy owner of 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 the Pharmacy during the period 1 January 2017 to 22 October 2018; *and/or*
 - b. Caused to be sourced and supplied and/or permitted to be sourced and supplied to Mr O'Meara from the 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; *and/or*
 - c. On or about 24 August 2018 caused and/or permitted Mr O'Meara 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*
 - d. Failed to keep and/or maintain and/or cause to be maintained at the 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; *and/or*

AND FURTHER by reason of one or more of the allegations and/or sub-allegations set out 1 above, Mr O'Meara, being an employee and/or a pharmacy owner of the Pharmacy has;

- a. 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; *and/or*

AND FURTHER by reason of one or more of the allegations and/or sub-allegations set out 2 above, McGrath and Connolly Limited, being a pharmacy owner of the Pharmacy, has;

- b. committed misconduct such that were McGrath and Connolly Limited to apply for registration as a pharmacist, the Council of the PSI would be likely to refuse to register that person; *and/or*

AND FURTHER by reason of one or more of the allegations of misconduct of Mr O'Meara and/or McGrath and Connolly Limited, as referred to at a) and/or b) above, were Mr O'Meara and/or McGrath and Connolly Limited to apply to the Council of the PSI for registration as a pharmacist, the Council would be likely to refuse to register one or both of them.

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 8th 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 14th 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. 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.

Mr. Kennedy, proceeded in respect of McGrath and Connolly Limited, trading as Wicklow CarePlus Pharmacy and advised that:

1: *"I am to indicate in the first instance that any documents which the Registrar wishes you to receive can be admitted without formal proof and that includes all the documentation contained in the core book."*

2: *"I am also instructed that insofar as the facts are concerned, none of the facts are being put in issue. I am happy for the Committee to have regard to the transcripts of the hearing in respect of Mr John O'Meara and the evidence contained within those transcripts. I hope that that is of some assistance to the Committee and will short circuit matters."*

3: *“In terms of the notice against McGrath & Connolly Limited, (Wicklow CarePlus Pharmacy) as I indicated when we were in private session, my instructions are to:*

- *admit the facts set out in allegation 1(a) through to (g) of the notice.*
- *I am also instructed to accept that by reason of one or more of those allegations or sub-allegations, Mr O'Meara, being an employee and/or 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.”*

Mr. Kennedy, with the agreement of Mr. Beatty, progressed to make his submission with regard to sanction. In doing so he advised that:

“We are respectfully submitting to the Committee in all the circumstances of the case is that the appropriate sanction would be one of the imposition of conditions. I understand that the Registrar will join with the Registrant in supporting this aspect of the application.”

With specific reference to Section 48(1)(b)(ii), Mr. Kennedy proceeded to read the conditions being put forward into the record with the advance advice that, importantly, they follow engagement between the Registrar and Registrant and they were considered to be acceptable and appropriate to the Registrar with a view to protecting the public. A copy was made available to the Committee.

The proposed conditions, as read into the record, were as follows with respect to McGrath and Connolly Limited, trading as Wicklow CarePlus Pharmacy (7531), Unit 5 and 6, Supervalu Centre, Wicklow Town, County Wicklow:

1. That Mr John O'Meara MPSI (Registration No. 7210) not have or be permitted to have any direct or indirect role or involvement in the management and/or operation and/or running of Wicklow CarePlus Pharmacy (the “Pharmacy”) in any capacity, to include as a director of McGrath and Connolly Limited and/or as an employee of that company or any other such company as may be in ownership of the Pharmacy at that address or other address.
2. That Mr John O'Meara not be permitted to hold keys to and/or access the Pharmacy premises of Wicklow CarePlus Pharmacy.
3. That the directors of the Pharmacy will 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 and the exercise of their directorial duties.
4. That a director of the Pharmacy will provide written confirmation, at quarterly intervals, that these conditions have been adhered to.
5. That the Superintendent and Supervising Pharmacist of the Pharmacy will be notified of these conditions.
6. That, in the event there is any non-compliance with conditions 1 – 4 above, a director of the Pharmacy will notify the PSI within one day of such non-compliance.

7. These conditions 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.
8. That McGrath and Connolly Limited trading as Wicklow CarePlus Pharmacy shall be responsible for any and all costs arising from its compliance with these conditions.

Mr. Kennedy reflected that the primary purpose of sanction is the protection of the public and any sanction recommended to or imposed by Council must be proportionate. It was his respectful submission that these were clear, realistic and workable in that they could be monitored. In addition, were there to be any breach of condition then consequences would follow.

Mr. O'Meara has had no involvement with the company since September 2018. In addition, he had given undertakings to the PSI which were the subject matter of an agreement dated the 11th October 2018. Through this agreement he was replaced as Superintendent Pharmacist, was required to resign his position as a director; hand over his keys to the business and was replaced as a director by his mother, Mrs. Mary O'Meara, who in turn entered into a management contract with CarePlus Pharmacy Limited in relation to the day-to-day running of the retail pharmacy business. That agreement stays in place until such time as the O'Meara family no longer hold any interest in the retail pharmacy business.

Mr. Beatty outlined the position of the Registrar that the approach taken was helpful and that, were the Committee to consider proceeding on the basis of conditions being imposed the Registrar did not consider it necessary to proceed with the Inquiry so far as it related to Allegation 2.

The Registrar was supporting the recommendation to Council of the imposition of conditions.

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 12th and 13th of October 2021 as accepted and in addition; and
- The Committee's Report of December 11th was accepted to be put into evidence.

5. Standard and Burden of Proof

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

6. Findings of the Committee

The Committee carefully considered the presentations, submissions and the advice of the Legal Assessor.

Noting that the facts of Allegations 1 (a) through (g) are admitted and that Allegation 2 is not being pursued on behalf of McGrath and Connolly Limited, trading as Wicklow CarePlus Pharmacy (Registration No. 7531); *and*

Noting the admissions on behalf of Mr. John O'Meara that it constituted professional misconduct on his part by reason of the agreed documentation and evidence submitted; *and*

Noting the elements of agreement determined between the Registrar and the Registrant and the Registrar's support of the recommended conditions the following are the findings of the Committee:

In respect of Allegation 1(a) these were admitted as to fact and found to amount to professional misconduct;

In respect of Allegation 1(b) these were admitted as to fact and found to amount to professional misconduct;

In respect of Allegation 1(c) these were admitted as to fact and found to amount to professional misconduct;

In respect of Allegation 1(d) these were admitted as to fact and found to amount to professional misconduct;

In respect of Allegation 1(e) these were admitted as to fact and found to amount to professional misconduct;

In respect of Allegation 1(f) these were admitted as to fact and found to amount to professional misconduct;

In respect of Allegation 1(g) these were admitted as to fact and found to amount to professional misconduct. Having regard to the Notice of Inquiry of McGrath and Connolly Limited, trading as Wicklow CarePlus Pharmacy (Registration No. 7531) the Committee recommends to Council the attachment of the following conditions to the continued registration of the registrant as provided for under Section 36 (1)(b) of the Act:

Conditions – McGrath and Connolly Limited, trading as Wicklow CarePlus Pharmacy (7531), Unit 5 and 6, Supervalu Centre, Wicklow Town, County Wicklow are:

1. That Mr John O'Meara, MPSI (Registration No. 7210) not have or be permitted to have any direct or indirect role or involvement in the management and/or operation and/or running of Wicklow CarePlus Pharmacy (the "Pharmacy") in any capacity, to include as a director of McGrath and Connolly Limited and/or as an employee of that company

or any other such company as may be in ownership of the Pharmacy at that address or other addresses.

2. That Mr John O'Meara not be permitted to hold keys to and/or access the Pharmacy premises of Wicklow CarePlus Pharmacy.
3. That the directors of the Pharmacy will 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 and the exercise of their directorial duties.
4. That a director of the Pharmacy will provide written confirmation, at quarterly intervals, that these conditions have been adhered to.
5. That the Superintendent and Supervising Pharmacist of the Pharmacy will be notified of these conditions.
6. That, in the event there is any non-compliance with conditions 1 – 4 above, a director of the Pharmacy will notify the PSI within one day of such non-compliance.
7. These conditions 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.
8. That McGrath and Connolly Limited trading as Wicklow CarePlus Pharmacy shall be responsible for any and all costs arising from its compliance with these conditions.

Signed:



Dermott Jewell – Chairperson

Dated:

10th March 2022