

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 Pharmacist:

Ms. Aileen D’Arcy

Registration Number:

6123

Complaint Reference(s):

496.2019

Date of Inquiry:

27th to 29th September 2021.

Members of Inquiry Committee:

Mr. Dermott Jewell, Chair, non-Pharmacist

Ms Rebecca Kilfeather, Pharmacist

Mr. Paul Ard, non-pharmacist

Legal Assessor:

Mr. Nicholas Butler, SC

Appearances:

For the Registrar:

Mr. Remy Farrell, SC

Instructed by Ms. Gráinne O’Callaghan, Fieldfisher Solicitors.

For the Respondent:

Mr. John Fitzgerald, SC (In attendance from the afternoon of Inquiry Day 1)

Instructed by Mr. John Smith and Mr. Cormac O’Ceallaigh, Solicitor.

In Attendance:

Ms. Liz Kielty, Solicitor, PSI

Ms. Anna Malone, PSI

Ms. Catherine Dunne, TrialView

Mr. Paul Long, Logger

Evidence Presented:

Mr. Padriac Knox, concerned member of the public

Ms. Úna Ní Chárthaigh, Communications and Engagement Executive, PSI.

Dr. Conor B. McCrystal MPSI, Independent Expert Witness.

Documentation Considered:

Exhibit 1: Core Book

Grant Thornton Report

Submission on behalf of Ms. D'Arcy

Replying Submission of the Registrar

R9Ngole) v University of Sheffield – judgement.

1. Subject matter of the Complaint

The matter of the Pharmaceutical Society of Ireland (PSI) and the inquiry into allegations of professional misconduct within the meaning of Section (35)(1)(a) of the Pharmacy Act 2007 on the part of Ms. Aileen D'Arcy (Reg. No. 6123) by the Professional Conduct Committee under Part 6 of the Act.

2. Allegations

That you, while you were a Registered Pharmacist, between (the period in or about 2 April 2018 and in or about 18 May 2018 (Revised under application to read)) 15 May to 19 May 2018:

1. Posted a comment on the Facebook social media platform through an account held under the username "Aileen D'Arcy" which appears at Appendix A, in which post you identified yourself as a pharmacist, wherein you used inflammatory and/or inappropriate language to express your views on the issue of the termination of pregnancy services/abortion and/or the role of a pharmacist in the termination of pregnancy services, including in relation to the supply of medicines for the termination of pregnancy services; and/or

2. Such further allegations as may be notified to you in advance of the inquiry.

And further by reason of the allegation set out at 1 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) a breach of Principal 4 of the Code of Conduct for Pharmacists (2009 version).

3: Introduction

Mr Farrell, opening the Registrar's case, advised the Committee that there was no issue of contention regarding Ms. D'Arcy being the author of the post which was the subject of the inquiry.

He further advised that certain information had now been provided by Ms. D'Arcy, which, potentially, would obviate a substantial amount of evidence. He therefore made application for and was granted a delay in commencing evidence as he was awaiting an expert review of this information.

Pending that review it was agreed that Mr. Farrell would open the Registrar's case by way of putting the Committee in a fully updated position on matters as they were at this stage.

Mr. Farrell stated the appropriate standard of proof to be the criminal standard of beyond reasonable doubt.

This was a case brought by the Registrar in respect of Ms. Aileen D'Arcy who was first registered in October 1997.

The background to the complaint was that on the 25th of May of '18, a constitutional referendum was held. This was in respect of the 36th amendment to the Constitution and was an amendment that dealt with abortion.

In the days or weeks prior to the amendment, Ms D'Arcy made certain comments by way of a Facebook post. The focus of the inquiry is on this post and regarding a Facebook discussion about a particular article in the Irish Times. In the course of that discussion, Ms D'Arcy made the comment:

"Yes, but people like me, a pharmacist, will be forced to be complicit in the taking of a child's life in the womb. Why should your opinion and another person's sex life affect mine? People should take responsibility for their actions and stop expecting other people to support them. People should take the bloody abortion pills themselves and if they kill themselves in the process, it is their own fault, nobody else. If you have sex, it is your choice and if you want to kill your baby and yourself, it is your fault. Responsibility and accountability seems to be out of the picture. If you drive a car at speed and destroy your life, that is your choice and stop involving others. Many pharmacists can't practise in the UK because they won't supply abortion pills, plus the taxpayer will have to pay for reckless behaviour."

Mr. Farrell sought to clarify from the outset that the Registrar did not take issue with the substance of Ms D'Arcy's view. One could legitimately make the point, and Ms. D'Arcy had done so, that the views expressed were political views and the Registrar considered this to be correct.

Rather, it is the nature in which those views are expressed and that was very important when one considers the notice of inquiry. The notice of inquiry emphasises the inflammatory and inappropriate nature of the language used to express views as distinct from the views themselves.

Mr. Farrell advised that this would be a very important distinction for the Committee to bear in mind throughout the hearing.

Mr. Padraic Knox came across the post and took a screenshot and posted the image on his Twitter account. This took the form of a picture of the Facebook post. He then specifically tagged both the Twitter accounts of the Minister for Health and the PSI and directed the posting to them.

That tweet came to the attention then of Ms Úna Ní Chárthaigh, Communications and Engagement Executive in the PSI. On foot of the content of that Tweet, she brought it to the attention of the Registrar.

In due course the Registrar made the complaint that is the subject of the allegations.

Mr. Farrell advised that there had been significant interaction between the Registrar and Ms. D'Arcy and her legal representatives and that Mr. Fitzgerald SC had put these and all matters and arguments raised, forward in his submission. There was now the likelihood that a further written submission would be forthcoming.

Mr. Farrell brought the Committee's attention to the **Guidance for Pharmacists on the use of Digital and Social Media**, which was introduced for registrants in April 2013. In specific terms he referred to the following extracts from the Guidance document.

The purpose of this guidance is to ensure that pharmacists are cognisant of their responsibilities to ensure that their online activity is consistent with their professional role.

The Code of Conduct for pharmacists requires that pharmacists exercise their profession in a manner that is directed to maintaining and improving the health, wellbeing and safety of patients and the public. Pharmacists should ensure that their professional online interactions are in accordance with the principles laid down in the Code of Conduct.

Key points of the Guidance advise pharmacists that they should:

Consider how best to separate your online professional and private profiles and interactions. And ensure that all information posted online is appropriate for the audience that can access it and the location in which it is posted.

Mr. Farrell advised his opinion that in any situation where one is considering posts made by a pharmacist, one of the most obvious and relevant considerations to engage in is the extent to which the social media post self-identifies the author as a pharmacist.

When we engage in social interactions, whether that's on social media or in any other social setting, we may well express ourselves in a way that we would not express ourselves in a professional context.

It is one of the significant features of the Facebook post that is essentially the subject of this inquiry, that Ms D'Arcy self-identifies as a pharmacist, makes the observations as a pharmacist and identifies herself as such.

The Guidance document requires that:

In keeping with principal four of the Code of Conduct, interactions with digital and social media should be subject to the same professional standards and ethical considerations as other professional interactions.

And, under the heading Professional Boundaries that:

Use of digital and social media can lead to the blurring of professional and personal lives e.g. it may be a violation of professional boundaries to introduce patients to certain aspects of your private life. Consider how best to separate your online professional and private profiles and interactions.

Mr. Farrell reiterated that, at this point, he was repeating the fact that the extent to which the Registrar was making his case was narrow in its scope. It is about the mode and manner of expression as distinct from the substance of what is expressed.

4: Evidence and Submissions

Evidence of Mr. Padraic Knox

Mr. Knox advised that he was residing in the UK, that he is a communications manager and that, as an ex-pat he was interested in the referendum campaign in respect of the 36th amendment to the Constitution. He was in favour of the proposed amendment. He did not know Ms. D'Arcy, he had no direct contact with her and nor was there any form of connection with his or any of his friends posts.

Mr. Knox advised that he was concerned about the content of the Facebook post from Ms. D'Arcy and that he took a screenshot of it and forwarded it via Twitter to the corporate Twitter accounts of An Roinn Sláinte, the HSE and the PSI Regulator and also to Simon Harris, the then Minister for Health and Frances Fitzgerald, the then Minister for Justice. In his forwarding posting he included the text: *"Extremely concerned about the temperament of the person who posted the message below who purported to be in the trusted position of an Irish pharmacist"*.

At the time, across the Twitter and Facebook platforms, content referring to the repeal the 8th Referendum would have been coded or hashtagged as *#repealthe8th*.

It served to identify the content and bring it together on platforms. Mr. Knox also confirmed that the Irish Times article on Facebook was dated May 15th and his tweet was made in or about the 19th of May.

In cross-examination, Mr. Fitzgerald asked Mr. Knox why he was so concerned regarding this contribution to the debate at that time. He advised that: *“From my perspective, my personal perspective, a pharmacist provides impartial advice to their patients and when they enter a pharmacy or any other setting, the views expressed in this tweet were quite insidious and I was concerned that whether a relation of mine, a friend of mine or somebody who goes to a pharmacy should get impartial advice, impartial advice which isn't flawed by any of the views which were expressed in this tweet. And furthermore, tweets like this expressed publicly bring pharmacists, all pharmacists, into disrepute.”*

Evidence of Ms. Úna Ní Chárthaigh

Ms. Ní Chárthaigh advised that she is the Communications and Engagement Executive in the PSI. Her role includes support of the PSI communications strategy, maintaining and managing of the website and of social media accounts. She would draft media content for the PSI social media accounts but also monitor the accounts to see if the PSI was mentioned in any way.

In regard to the tweet from Mr. Knox she advised that it came in over the weekend and that she would have seen it on the following Monday when she logged in to work. She advised that people who follow the PSI account would also have received the tweet.

Her role was to bring any kind of tweets to the attention of Ms. Ruth Baily who works closely with the Registrar and it was agreed that it should be brought to the attention of the Registrar.

Under cross-examination Ms. Ní Chárthaigh confirmed her view at the time was that she *“was taken aback by the language used in Ms. D’Arcy’s post, considering her profession and what was being said. I felt it was a bit out there and I was uncomfortable at what she was saying”*.

Mr. Fitzgerald sought clarifications as to the factors giving rise to Ms. Ní Chárthaigh’s concern and reporting of the matter internally. Following some robust engagement and, specifically, in reply to the question *“You hold a different view to her, yes. But I take it you don’t have any particular issue with pharmacists having views that differ from your own?”*, she replied:

“No, sorry, and I’ll just backtrack there as well. Obviously, you know, you made your point about, you know, we have different opinions, but I also think and again, my opinion, as a health care professional.

I read the post as very one-sided and as a health care professional I think, you know, care needs to be given to a patient and I felt, like, reading the post it was one-sided on the side of the pharmacist.

And I think if you're in that profession you need to be, I suppose, open-minded, more open-minded, or you know, provide relevant information to a patient if you can't assist”.

Finally, in regard to the question from Mr. Fitzgerald regarding a threshold for escalating the posting internally Ms. Ní Chárthaigh responded that *“My role is to, anything that I feel inappropriate I raise, my opinion or not, I felt like it needed to go to a higher -- I'm a junior person I suppose in the PSI”*.

Evidence of Dr. Conor McCrystal

Dr. McCrystal confirmed his credentials and that he had prepared a report in relation to this matter.

At Mr. Farrell's request, Dr. McCrystal advised that his specific instruction was that his view was not required on the substance or correctness of the views, but rather the manner in which the views are alleged to have been expressed in the comment.

Findings of Dr. McCrystal's report:

1

Posted a comment on the Facebook social media platform through an account under the username "Aileen D'Arcy in which post you identified yourself as a pharmacist wherein you used inflammatory and/or inappropriate language to express your views on the issue of termination of pregnancy services/abortion and/or the role of the pharmacist in the termination of pregnancy services, including in relation to the supply of medicines for the termination of pregnancy services; and/or

2

And further, by reason of the allegation set out at 1 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) a breach of Principles 2 and/or 4 of the Code of Conduct for Pharmacists (2009 version)

3.1.1 Allegation 1 – Finding – Professional Misconduct;

3.1.3 Ms. D'Arcy has breached the Code of Conduct for pharmacists and the grounds for a finding of Professional Misconduct in respect of allegation 1 are as follows:

(i) Ms. D'Arcy acted in a manner that is infamous or disgraceful in a professional respect

(iii) There has been a breach in the Code of Conduct for Pharmacists, specifically:

Principal 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 act in any way which might damage the good name of their profession".

Specifically, 4.3: Practice within relevant legislative and professional regulatory guidance.

Mr. Farrell drew attention to an amount of additional Facebook material that had been provided to Dr. McCrystal earlier in the morning. Dr. McCrystal confirmed that he received the documents and that, in respect of those documents, nothing had changed his opinion.

Questions followed to clarify the context of the campaign around the amendment to the Constitution, the opposing sides upon which Ms. D'Arcy and Mr. Knox held in the pro-life debate and the datelines regarding the matters relevant to the report.

Mr. Farrell also engaged Dr. McCrystal on his observations concerning the Guidance for Pharmacists on the use of social media (as referred to above).

Dr. McCrystal referred to the particular relevance of this Guidance in this case and how it was up to pharmacists to inform themselves and ensure they were aware of its provisions and requirements.

"In particular, we're looking at this guidance was published in 2013 and a copy of it has been included in my report. That guidance states specifically that in keeping with principle 4 of the code of conduct: "Interactions with digital and social media should be subject to the same professional standards and ethical considerations as other professional interactions".

Principle 4

A pharmacist must conduct himself/herself in a manner which enhances the services which their profession as a whole provides to society and should not act in a way which might damage the good name of their profession.

Mr. Farrell referred to the information provided to Dr. McCrystal.

Dr. McCrystal noted that Ms. D'Arcy was a hospital pharmacist who had specifically identified herself as a pharmacist.

"Really in that case, if you're identifying yourself as a pharmacist on social media, then I suppose you're bound to follow the guidance provided by the PSI that I've already outline in relation to how you conduct yourself on social media. So, the standard is high".

Inflammatory and Inappropriate

In regard to the language expressed Mr. Farrell returned to an extract from the quoted text and the question of its significance:

"People should take the bloody abortion pills themselves and if they kill themselves in the process, it is their own fault, nobody else. If you have sex, it is your choice and if you want to kill your baby and yourself, it is your fault"

Dr. McCrystal reflected that: *"Well, I think as we sit here this afternoon and we look at this in the cold light of day, you know, it certainly meets the definition of inflammatory and inappropriate language whichever way you look at it"*

"People should take the bloody abortion pills themselves,"

“is this a way that a pharmacist should be speaking in a public forum? I would say it's not appropriate. It's not how pharmacists should express themselves. If this is somebody's personal social media profile, that's different. But if you're putting yourself forward and saying I'm a pharmacist, you know I don't think that's appropriate language to use in this sort of forum”.

Later, in the course of cross-examination by Mr. Fitzgerald, it was put to Dr. McCrystal to consider that the PSI guidance left to the individual pharmacist to consider whether what they say might affect the good name of the profession. Mr Fitzgerald added that this was quite a subjective standard.

Dr McCrystal's response was that *“I think it's down to the individual then to make decisions about how they -- how they represent themselves online. Well, I think pharmacists would be able to identify where the line is, and they would know if they had stepped over the line”.*

Mr. Fitzgerald went on to suggest the consideration that it was, equally, a matter in which many pharmacists may have different views on what does and does not bring the good name of the profession into disrepute. And asked if Dr. McCrystal would agree with that.

Dr. McCrystal's response was *“I suppose, to bring it back to the Facebook post, and I quote, “People should take the bloody abortion bills themselves, and if they kill themselves in the process it is their own fault and nobody else.” You know, I would have to say that the line has been crossed in that matter, and in that particular piece, and I think most pharmacists would recognise that as overstepping the line”.*

Mr. Farrell referred to the reference to people killing themselves specifically and if Dr. McCrystal had anything to say about that?

“I don't think that's language that people would expect a pharmacist to use and certainly I would consider that as inappropriate language to use as a pharmacist.”

Regarding the reflection upon the profession:

“The fact that Ms D'Arcy identified herself as a pharmacist. So, I suppose a member of the public reading comments like that, you would have to say that there's a very strong possibility they would equate those comments with pharmacists and the wider pharmacy profession. It certainly doesn't read well from a pharmacist's point of view of a pharmacist reading that, you know, irrespective of their opinion in this particular area, you know, I just don't think it reads well. And certainly, a member of the public reading that, I think it would affect their trust in the profession”.

and

“If you look at principle 4 again: “A pharmacist must conduct him or herself in a manner which enhances the service which the profession as a whole provides to society and should

not act in a way which might damage the good name of the profession". And it could be argued in this case that the good name of the profession has been damaged by those particular comments".

In regard to the posting, it was raised by Mr. Farrell and acknowledged by Dr. McCrystal that it was important to note that it was one post and not a course of conduct or repeated behaviour.

It was later also noted by Dr. McCrystal that:

"Certainly Ms D'Arcy has been on the register for quite a period of time and I suppose the question here is not of one, it doesn't concern her professional competence".

"That's not the question that's asked. It's to do with this particular issue of an infringement of the social media guidelines. It's a conduct matter. It's not a competence matter".

"...this is an example of an overlap between someone's private profile and private life on social media versus their profession and I suppose it's a warning for many pharmacists who probably haven't given this area enough consideration. And you know, certainly it's an educational matter for pharmacists and you know, it's a warning to all professionals that you must provide some degree of separation between your personal and professional life online".

In cross-examination, Mr. Fitzgerald raised the issue of the number of people who may have seen the posting and what Dr. McCrystal considered to be the impact of a low or very low number of viewers upon the claim of bringing the profession into disrepute.

Dr. McCrystal's response was:

"Well, I think people have to recognise what the standards are, and they have to moderate their own behaviour to meet the standards. It's really irrelevant if one person hears it or a multiple of that hears it. You know, I think professionals -- as professionals, we have to uphold the standards. We have to inform ourselves of what the standards are, and we have to know if we're stepping beyond and not meeting those standards. So, to me, the issue is not how many people heard this; it's about if you've met the standards or not".

And, in reply to Mr. Fitzgerald's question - So that does comply with principle four?

Dr. McCrystal's reply was:

"Well, absolutely. I think, in fact, we're agreeing with each other, in that my understanding of your interpretation of principle four is that it sufficient, and it seems to be clear on its face, not whether in fact it does affect the good name of the profession but that it might do so in the future. I think we agree on that?"

Asked, is it your view, however, that pharmacists are in a separate category, that they cannot express emotional views or emotive views?

Dr. McCrystal's response was:

"Again it all comes back down to context. Listen, pharmacists are intelligent people. If pharmacists weren't expressing views, there would be something wrong. You know, I think -- I think the country needs pharmacists to express views. Pharmacists are well entitled to express views. I suppose it's the manner in how you express your views. I think that's the key".

Seriousness

Dr. McCrystal:

"In accordance with the decision of O'Laoire v Medical Council, before a finding of professional conduct can be made, the act or omission in question must be considered serious. I believe that the threshold of seriousness has been breached in this case. This is a matter concerning conduct"

"Obviously a finding of professional misconduct is an extremely serious matter for any pharmacist and it's not something to be taken lightly. Now, in my opinion, this case is serious enough to meet the threshold.

Certainly, we thought that it was an isolated incident, that's what the evidence has shown. But, however, it's not something that can be ignored. So, it is a serious matter and it concerns conduct."

Mr. Farrell then asked for an elaboration of Dr. McCrystal's finding that Ms. D'Arcy acted in a manner that was infamous or disgraceful.

"Really it's not a standard that the public would expect of a pharmacist. And it certainly falls, in my opinion, it falls under that category of acting in a manner that is infamous or disgraceful in a professional respect. It's not to be expected of a pharmacy professional and it wouldn't be acceptable".

Mr. Fitzgerald, in cross-examination of Dr. McCrystal put it that, given the standard of seriousness that he attached to this, that it was his position that it is enough for there to be one isolated post in the heat of the moment for that to constitute serious misconduct. Dr McCrystal confirmed this to be the case.

Mr. Fitzgerald suggested that this was a very exacting standard that Dr. McCrystal was applying.

Dr. McCrystal 's responses were:

"Yes, I guess it comes down to the subjective nature of the code of conduct. You know, it comes -- and pharmacists should not act in a way which might damage the

good name of the profession. It's subjective, whichever way you look at it."

"Yes, listen, I think we've probably been over it. You know, the fact -- the fact that someone - if Ms D'Arcy maybe -- if she hadn't said that she was a pharmacist, would we be here? If she hadn't mentioned in this post that she was a pharmacist, would be here talking about this now? We wouldn't be.

Unfortunately that has tied us -- tied -- she has tied her profession into these comments".

"-- all I can go on is the guidance that -- the base I provided, and that's digital and social media guidance which is that interactions with digital and social media should be subject to the same professional standards and ethical considerations as other professional interactions, and, you know, certainly it's a warning for pharmacists, if you're out there on social media, your personal and professional profiles, you must maintain at a grave separation".

"I mean, this is a very unfortunate set of circumstances that has led us to be here, and I'm certainly sympathetic to Ms D'Arcy in this case".

A member of the committee asked if it was fair to reflect that without the words *"people like me"* in the posting there would not have been a complaint.

Dr. McCrystal suggested the qualification of *"people like me, a pharmacist"* was also relevant. This was why the posting was sent to the PSI.

Regarding references to Section 4 and the importance of the word 'might' within its provision for damage the question was posed as to the meaning being damage to the reputation of the profession and not the actual damage.

Dr. McCrystal considered this to be the correct interpretation and that it was not what damage had been done but potentially what damage may happen in the future.

Evidence of this was suggested in the reflection that there were members of the public and the media present at this inquiry reflecting the reality that the potential for damage to the reputation of the profession is still there.

5: Legal Considerations

Submissions

At commencement of Day 2 of the Inquiry, Mr. Fitzgerald advised that *“I have explained to Mr Farrell that what I would ask the Committee to consider is in light of what I think I would characterise as the rather nuanced and balanced position of Dr McCrystal on the subjective nature of the test being applied and the degree of sympathy that he had for someone in Ms D’Arcy’s position whether the Committee might consider dealing with the matter by way of allowing Ms D’Arcy to give an undertaking, pursuant to section 46.1(a) of the 2007 Act, namely to have regard to the social media guidelines and to consider it in any future interaction she has with social media. I’ve taken express instructions on that, confirmed this morning and, in my respectful submission.”*

Mr. Farrell, in response submitted that *“The first thing to be said is this; Dr McCrystal was absolutely clear on the question of seriousness and I -- when I say seriousness, I’m talking about the seriousness in the Corbally sense or in the O’Laoire sense, in other words, that the threshold of seriousness had clearly been met in this case, and that’s wholly unsurprising in the circumstances. I don’t think, and I’m subject to correction by Mr Fitzgerald, but it doesn’t appear that there’s really any serious debate in this case, but that the words used by Ms D’Arcy were both inappropriate and inflammatory, it’s certainly very difficult to contend otherwise when one just looks at the very stark terms in which the post was made”*.

“And one comment I think has to be made in respect of the approach to this inquiry, and I’m not being in any sense critical, but it is a striking feature of the run of this inquiry that Ms D’Arcy hasn’t actually indicated any view as to whether the post was inflammatory, was inappropriate and I just note that it is only now at this stage in the inquiry that there’s an articulation of what I suppose implicitly is a desire on Ms D’Arcy’s part, not to repeat the conduct. The Committee would certainly have an awful lot more to go with if one had an understanding of why it was Ms D’Arcy was saying that”. And

“So, in those circumstances, I think our view would be that if the Committee is considering going down this route, it really should be in circumstances where there’s also a consent to censure. Now, I take it from what Mr Fitzgerald is indicating, that the consent to a censure is not something that’s actually going to be forthcoming”

Mr. Fitzgerald, following discussion and advice given and clarifications requested by the legal assessor, subsequently confirmed that - *“My instructions are only in terms, or only extend insofar as in the terms of subparagraph (a) and not to include an acceptance of an admonishment or a censure”*.

Mr. Butler advised that, at this point, as further exhibits had not been received - notably Submissions on behalf of Ms. D’Arcy and the Registrars submission in response – that they should be made available for the Committee to review. This was agreed.

In advance of the Committee considering the Section 46 request, Mr. Butler, in the presence of all parties, outlined the issues and areas for consideration. In due course the Committee

returned to advise that having carefully considered all submissions and the independent legal advice given, the Committee had not at that point decided on any issue in the inquiry. It was the view of the Committee that the allegation was of a serious nature, and that, as at that point they had heard nothing about Ms D'Arcy's own view of her admitted conduct. For these reasons, the Committee did not propose to make a request under section 46 at that time.

Upon resumption of the Inquiry Mr. Fitzgerald sought, in light of its reference in the Committee's ruling, to advise the Committee in regard to the position adopted by Ms. D'Arcy. He advised that:

"I have express instructions on her view now on the contents of the post. And in the cold light of day she accepts that it was an intemperate comment and regrets making it. She was making it in the context of people taking abortion pills themselves, but she accepts that she worded it wrong and that it came out wrong"

and

"Also, in case there's any doubt on it, that doesn't involve a concession that there was professional misconduct and that it comes within the definition of professional misconduct. I just wanted to be clear on that".

6: Closing Submissions

Mr. Farrell commenced his closing submission by referring to and summarising the evidence presented. These were detailed submissions, which can be viewed in full in the transcripts. What are inserted below are some salient points made in the course of the closing submission.

But I suppose it must be open to question as to whether it's really permissible for her to indicate a position by way of her legal representative and thereby avoid cross-examination. And when I say cross-examination, what I really mean is the very obvious questions, the follow-up questions that arise from what has just been said on her behalf. Is it the case that she accepts that saying these things in a public forum possibly brings the profession into disrepute?

Does she agree, for example, that the fact that she introduced her Facebook post by referencing her position as a pharmacist is of relevance? So, I pose those questions rhetorically; I'll leave them hanging. The defence of the allegation in this inquiry has in fact all really been about the substance of what she said and not the manner in which she said it.

But I would make the observation that it is remarkable how little of the focus of this inquiry in terms of the questioning and so on has actually been concerned with the words that were uttered. So, while it's suggested today that Ms D'Arcy accepts that the words were intemperate. Again, that is simply to state the obvious in my submission. One just has to

look at the words. Intemperate is a relatively benign and modest description that one might apply.

And it is notable that the whole focus of the defence of this allegation has really been about trying to pull the focus away from the manner in which Ms D'Arcy expressed herself to the substance of what she addressed, of what she stated.

But it certainly is my submission that when one stands back from this case and considers the extent to which issues such as freedom of expression and so on arise, the first thing one has to appreciate is the extremely narrow scope of the case. And, again, I'm probably labouring the same point I laboured yesterday, which is it's all about the manner of expression, not the substance of the point that is made, and that must be a significant part of the overall analysis.

A further point that was raised in cross-examination with Dr McCrystal, and possibly others, was the idea that maybe this post got a very limited circulation. Firstly, this was the Facebook page of the Irish Times, sometimes referred to as the paper of record, but in any event, a national title and it's sufficient to just deal with it in those terms.

We are talking about a contribution by Ms D'Arcy on the Facebook page of a national newspaper in the context of an ongoing debate over a contentious and emotive topic, a discussion about an article that had shortly beforehand been published, and it is wholly unreal to suggest that, assuming we're correct to say, that the comments were not something that might impact on the reputation of the profession.

My submissions really, when one looks at this limb of the misconduct that we allege breached the Code of Conduct, it shouldn't really give rise to any particular difficulty. And there's a very simple answer which is the concept of seriousness in the Corbally sense, covers not just the other limb, the infamous and disgraceful conduct limb, it also clearly covers breach of the Code of Conduct.

And we can break down I suppose the core of the case we make to three simple propositions, that I hope are not going to be too controversial. The first point is this; Ms D'Arcy very pointedly identified herself as a pharmacist and proceeded to make her comments from that privileged position. And to put it in simple terms, she sought to invoke her professional status in the course of this, what was essentially a public debate, and she did that for the perfectly proper purpose of adding weight or heft to the points she was making.

The second point is this; This is a thing done in a public forum in a public way, there is no doubt about that, and it is significantly public.

There is no room for debate whatever here. This is an online discussion on the Facebook page of a national newspaper. So that's the second contention, we say is important.

And the third contention is this; pharmacists play a vital role in providing frontline medical care in the community, and from that perspective, the language used by Ms D'Arcy, apparently invoking or expressing indifference to people killing themselves, is of particular significance. On any view, the language that was used was wholly inflammatory and inappropriate.

I want to deal with the suggestion that the posting wasn't something that was done in a professional respect. You've already heard what I say about the fact that the post itself commences with the observation that she's a pharmacist and makes other observations relevant.

And being a registered professional comes with rights, comes with obligations, comes with privileges of various sorts. And, in my submission, it is simply impossible for a professional to seek to invoke that status in the course of public debate and then at the same time, or subsequently, when questions are raised about the manner in which one is engaged in that debate to say, well, actually this has nothing to do with my professional status.

Mr Fitzgerald quite properly cross-examined Dr McCrystal on the differing levels of seriousness yesterday. And you've heard what I've said already about Dr McCrystal taking a very measured approach, and identifying this as being at the less serious end of the scale, albeit that it is, by definition, serious.

Turning then to, I suppose, the final substantive issue here, which is the question of freedom of expression. It's not clear to us, it has to be said, the extent to which this is a real issue in this case, and I note that in some of the prior written submissions or observations offered on behalf of Ms D'Arcy, there was a reference to some of the case law, the European Court of Human Rights and so on.

If you take Ms D'Arcy's Facebook post and you just conduct this quick-looking thought experiment, and ask yourself, would it have been all right for Ms D'Arcy to say those words to a patient that came into a pharmacy where she was working, to say things such as, well you can go out and kill yourself and your baby and what not? And would it be sufficient, having said that to a patient, for Ms D'Arcy to say, this is my profound, personally held belief, you as a Committee of the PSI cannot interrogate that, it is off-limits, because this is my freedom of expression? I mean it's actually tantamount to an assertion that somebody

can say whatever they want to say, so long as they believe it and the manner in which they say it doesn't really matter.

But, as I've said to you, if you actually look at this case, not in the terms that Ms D'Arcy might wish we had made the case, namely that it's all about the substance of what she said. But look at it in the context of the way we've actually framed it which is it's about the manner in which she expressed herself. It's impossible to avoid this conclusion. Insofar as there is an interference with the right to freedom of expression, it is the most minimal interference possible, because nobody is telling Ms D'Arcy that she can't say what she believes.

What's being said to Ms D'Arcy is you have to be careful about how you express yourself, particularly when you do it on social media and most pointedly when you do it as a registered professional, when you're evoking your own status as a registered professional.

And, in my submission, there really isn't any issue here in terms of whether this is a justifiable interference with the right to freedom of expression or not.

The last thing I want to do is I just want to quickly address the question of sanction, should it arise, and obviously this is dependent on findings the committee may or may not make.

But looking at the various sanctions that are available, it doesn't seem to us that this is necessarily a case where there is much anything to be gained by conditions.

That being so, it would appear, from our perspective, that the sanctions of admonition and censure may well be the appropriate ones. Again it may be something that is useful for us to indicate at this stage what the registrar's view is.

In terms of the considerations to be adopted, the real issue here I think is probably protection of the reputation of the profession and public confidence in the profession doesn't seem to be a case where there's any obvious concern in respect of public safety per se. So, that would appear to be the primary consideration to bear in mind from a sanctioning perspective. And there's obviously an important signalling approach, particularly in the context of promoting professional standards. So, that sanctioning purpose is also perhaps engaged.

Obviously, you have to afford as much leniency as possible and there are mitigating factors in this case. But it must be said I think that, and this will be self-evident from the evidence, that what we are dealing with here is a once-off incident, that is undoubtedly the case. I

think that was a point that was being made in the context perhaps of seriousness, or lack thereof. I just observe in passing that when one looks at Section 33 it contemplates a series of events or a series of conduct as possibly giving rise to misconduct, but also acts. So, the fact that it's a once off certainly doesn't have any obvious implication in terms of not being misconduct. But that is clearly a relevant matter to take into account in terms of any sanctioning and obviously there's the fact that I think Ms D'Arcy is of otherwise good record.

There is, of course, the potential aggravating factor, should this arise, of an apparent absence of insight. It is just notable that that's not something that we've heard from Ms D'Arcy and that's a matter that I think you should have regard to as well.

Mr. Fitzgerald commenced his closing submission by referring to and summarising the evidence presented. These were detailed submissions which can be viewed in full in the transcripts. What are inserted below are some salient points made in the course of the closing submission.

Let's just separate all the sound and fury here and boil this down to a very simple issue of whether or not Ms D'Arcy is entitled to express an inflammatory view. And secondly, whether once there's some minimum threshold of seriousness passed, consequences must follow.

And I would respectfully submit, in these unprecedented circumstances, because this is an unusual case occurring in unusual circumstances in an environment of technology that we are all either becoming familiar with, or totally unfamiliar with, and trying to grapple through. And in fact, as I said, Dr McCrystal I thought was very fair in his evidence where he talked about -- he struck me as a man, in fact, who was slightly grappling with the definition and saying look, it's a subjective matter, it's a matter for the committee. It's my view it's serious. But look, it's a salutary lesson really to us all. So, as I say, an important word of caution must be rung before the committee accepts Mr Farrell's rather gentle invitation to make a finding that is in fact a serious one.

In considering the difficulty of this case, the novelty of the circumstances and the difficulty of the circumstances, we are all, I suppose, as I said, beginning to grapple with the implications of if you instantaneously tweet something or post something on Facebook, what effect does that have. And as I said, Dr McCrystal I thought was quite candid and quite fair in his acknowledgement of the speed and simplicity with which that can be done. And where that's relevant, in the context, I suppose, of the breach of the code, given that it invokes -- it's predicated on a threat to the reputation or the good name of the profession

In considering the seriousness of Ms D'Arcy's comments, the committee should, in my respectful submission, consider the ease with which an instantaneous comment can cause grave offence of the kind, as I say, of which Mr Knox is emblematic. And consider whether the speed and simplicity of that is, firstly, in fact, and this is a point I'll come back to in due course, in fact, is a danger to the good name of the profession or is instead just a part of the to and fro of taking and giving offence that seems to be part and parcel of much social media commentary. Is that something that the Committee should concern itself with?

And the second context in which I say that's relevant is, if having given that offence in a comment in social media, is that sufficiently serious to engage the language of the Act and of the PSI.

Social media, I think, in this case demonstrates, in its novel and in this jurisdiction, it seems unique respect, social media is an area in which good name can all too quickly be threatened, offence can all too quickly be taken, passions can all too quickly be inflamed, but that, in my respectful submission, is a million miles from section 33 of the Act and the test for professional misconduct. And one must sift that robust toing and froing on social media from the test in section 33.

Ms D'Arcy has freely made submissions, representations in relation to it. I'm not sure what else can be said, other than the point that is made, and has been repeatedly made, namely that the manner in which that comment is made is not professional misconduct

- it must surely be a relevant factor and I haven't seen any authority to the contrary and I'd be very surprised if one were available, that it is not a relevant consideration for the Committee, whether thousands of people have protested about the contents of something or one, or none, or a few.

I didn't mean to imply that only one person had seen it, but there was one reaction and I suppose when you're talking about actual or threatened or potential damage to the good name of the profession, I simply say it's self-evident that the extent of reaction and the nature of that reaction, whether discursive or hostile, is a factor that the Committee must consider.

And I've referred in my submissions to the petitions of Lynch and Daly, which is a helpful summary or discussion of the meaning of disgraceful, albeit in a separate legislation, as *"implying 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."*

Once you step outside the shop, I'm not saying the line should be drawn there, but I suppose to use it in a different context it might be helpful to consider Mr Farrell's characterisation of Ms D'Arcy's sub-identification as a pharmacist. In that he said she was in a privileged position and that's inarguable, all professionals are of course. That she sought to invoke her professional status in order to add weight to the point she was making. Well, is that right? I have to say that's very difficult on my reading on it to reconcile with what Ms D'Arcy in fact posted. She didn't say I'm sorry you're wrong, I can tell you with my professional knowledge something that you don't already know. In fact, she was saying something quite different, and Dr McCrystal dealt with this very sensitively in his evidence I thought, in that at that time she was explaining that there's a particular difficulty for pharmacists who are of a pro-life disposition, almost certainly the wrong word, but that is their nature or the nature of their beliefs. That they may be required to prescribe what she terms abortion pills in contradiction of their beliefs. That's all she was saying.

Well, I think we can all agree that Irish Times website is a public forum. We won't disagree on that certainly. But, as I said, it goes back I suppose to the point of whether the degree of publicity goes to the degree of actual or likely harm and how that feeds into a consideration of overall seriousness which is what the legislation of the case done in parts.

I'm simply saying that the limited nature of the readership would be a factor that the Committee considers.

Mr Farrell's third proposition was that the pharmacists play a vital role in healthcare provision and of course they do- is Mr Farrell seriously suggesting that every time you identify yourself as a professional, you're acting in a professional capacity. It makes no sense. It could never be the case. All she was doing, this was not dealing with a patient, this was not talking about in any authoritative way seeking to win an argument or trump an argument by invoking a professional status, just simply -- illustrate a difficulty she had -- acting in a professional respect

Mr Farrell went on to consider free speech issues and that's something I don't want it to be eclipsed from the Committee's consideration because it's not going to, I think, be decisive either way. It's, again, a factor that I think the Committee should put into the mix which is that Ms D'Arcy is a citizen as well as being a pharmacist. She remains a citizen once she identifies herself as a pharmacist. It is of course acknowledged that with that status comes certain responsibilities, but the Committee must factor in that the right that she has in common with any other citizen does include a right to offend and that when it has been restricted by virtue of her professional status, that is what has been done, whether it is a restriction on that right on its own terms.

I'm going to conclude I suppose where I began by saying, Mr Chairman, that we must not lose sight of the statutory test as supplemented by the case law which is predicated on words such as, "Serious, infamous, disgraceful," and that these are strong words that must be strongly interpreted. They must be interpreted as having some moment and some degree of weight. And not being considered as some form of minimum threshold

I think it is of particular importance, that even when dealing with a medical professional's interactions with patients, Mr Justice Charleton in the Barry said that, "Crankiness, rudeness and preferring of silly opinions that were politically incorrect, does not constitute professional misconduct."

Now, if it doesn't do so, if it doesn't meet that standard in patient interactions, how can it do so in a comment put online that's picked up by one person who appears to be out there waiting to be offended and notifies various regulatory bodies. How can that be professional misconduct when the situation as envisaged by Mr Justice Charleton in the Barry case -- is not.

Mr. Butler, in the presence of all parties advised the Committee on the legal principles it was required to consider and apply. No issue was taken with any of this advice.

4. Findings of the Committee

The Committee applied the Criminal Standard of Proof, *i.e.*, Beyond Reasonable Doubt, in reaching all its findings.

Allegation 1, the factual allegation:

"Posted a comment on the Facebook social media platform through an account held under the username "Aileen D'Arcy" which appears at Appendix A, in which post you identified yourself as a pharmacist, wherein you used inflammatory and/or inappropriate language to express your views on the issue of the termination of pregnancy services/abortion and/or the role of a pharmacist in the termination of pregnancy services, including in relation to the supply of medicines for the termination of pregnancy services"

Finding as to fact:

The Committee found this allegation was proven as to fact.

Reasons:

Ms D'Arcy admitted that she had posted the material, which was the subject of the allegation. The Committee accepted and agreed with the evidence of Dr. McCrystal that the language used was inflammatory and inappropriate.

Allegation 1, the Professional Misconduct allegation:

Findings as to Professional Misconduct:

The Committee found that, based on the finding of fact referred to above, Ms D'Arcy was guilty of Professional Misconduct in that she acted in a manner that was:

- (i) infamous and/or disgraceful in a professional respect; and
- (ii) a breach of Principle 4 of the Code of Conduct for Pharmacists (2009 version).

Reasons:

The Committee accepted the evidence of Dr McCrystal in full. He referred extensively to all sections of his report when he gave his evidence and references to the report here were also the subject of his evidence. The evidence and report were consistent. The Committee relied on all of his evidence but found the following features of it to be particularly persuasive.

- At the start of her post Ms. D'Arcy's chose identify herself as a pharmacist. Her use of the term "*people like me, a pharmacist*" was, in the context of what followed, inappropriate and directly in conflict with the Guidance for Pharmacists on the use of Digital and Social Media and the PSI Code of Conduct for Pharmacists as referenced throughout the inquiry. In this context Dr. McCrystal's report concluded that: "*the actions of pharmacists online are held to a higher standard of accountability by the public. Aileen D'Arcy identifies herself as a pharmacist and as a result her online comments must be considered through the prism of the PSI Guidance for Pharmacists. In particular, it must be considered if her comments damage the good name of the pharmacy profession*".
- The Committee took note of the submissions regarding the degree of latitude that could be afforded to professionals in terms of their utterances, whether on social media or some other public platform. Dr. McCrystal referred to this in his report and responded to the consideration of this requirement to Mr. Fitzgerald. He said "*to argue that the professional guidelines do not apply would mean that the guidelines would have to be redefined. Professions have ethical codes that demand "more than conventional morality and law". The guidance that currently applies governing the use of social media by pharmacists is in place to ensure that their online activity is consistent with their professional role.*

However, pharmacists must be cognisant of the fact that comments made in the heat of the moment on social media can have serious and unexpected repercussions. This is why it is important to separate online professional and private profiles and interactions”.

The Committee considered this distinction to be applicable and relevant both to the matters raised regarding any degree of latitude and that of freedom of speech/expression.

- The manner in which Ms. D’Arcy expressed the views in her posting was the key consideration. Having heard Dr McCrystal's evidence, the Committee was firmly of the opinion that they were expressed in terms that were inflammatory and inappropriate. The manner in which they were expressed introduced the potential to damage the good name of the profession in the eyes of the public. Further, in finding that Ms. D’Arcy acted in a manner that was infamous and disgraceful we took careful note of the evidence and agreed with the argument that this would not be a standard that the public would expect from a pharmacist and was not acceptable. The Committee reviewed the terms used. They were also shameful and fitted the description of conduct which was “disgraceful and dishonourable in a professional respect”
- Dr. McCrystal's clear view was that the Professional Misconduct of Ms. D’Arcy that he identified met the threshold of seriousness.

The Committee considered all submissions in relation to delay and also in relation to infringement of the right to freedom of speech under the Constitution and Article 10 of the European Convention on Human Rights. These issues had been addressed earlier at a preliminary hearing and were considered further in the context of the Inquiry. In terms of the complaint about the time frame of the process, the Committee found that Ms D’Arcy had not been prejudiced by the time it took to conclude the Inquiry. There was no delay which could be described as inordinate or inexcusable. In relation to the freedom of expression arguments, the rights relied upon were not breached in the Committee's view. On this issue the Committee agreed with the Registrar's position that the allegation in this Inquiry related solely to the manner in which Ms D’Arcy expressed her views and not to the views themselves. Even if the Committee is wrong in these views it found that any infringement of Ms D’Arcy's rights was no more than absolutely necessary for the purpose of discharging its function of conducting the Inquiry process fairly and in accordance with statutory provisions.

5. Recommendation as to Sanction:

The Committee recommends that, pursuant to Section 48(1)(b)(i) of the Act, Ms D’Arcy be censured for her Professional Misconduct.

Reasons for the Committee's Recommendation as to Sanction:

The Committee sought a fair and proportionate sanction which reflected the seriousness of the professional misconduct, sent the appropriate message to Ms D'Arcy (as a deterrent) and the wider profession (so they will understand that such professional misconduct can have serious consequences), protected the public and also afforded Ms D'Arcy as much leniency as possible in the circumstances.

In the context of this Inquiry, the paramount consideration of the protection of the public was seen by the Committee in terms of promoting and maintaining the trust and confidence the public have in pharmacists and the way they are regulated. This is a vital public interest because if this trust and confidence is lost the professional care provided by pharmacists is inevitably undermined.

The professional conduct here certainly met the threshold of seriousness in the Committee's view. Professional misconduct involving the use of social media is potentially damaging to society if it undermines pharmacists, who are at the forefront of health care provision. Such damage can be inadvertent, and there is no evidence that Ms D'Arcy set out to undermine the profession.

The PSI's Guidance for Pharmacists on the use of Digital and Social Media is very clear. If it had been considered, even briefly, Ms D'Arcy might well have realised the seriousness of what she was doing and the potential harm it entailed.

In mitigation, Ms D'Arcy has not previously had adverse findings made against her and she admitted at the start of the Inquiry to having posted the offending material.

The Committee paid particular attention to the question of insight. Usually, this would entail an expression of remorse and convey a clear understanding of the seriousness of the wrongdoing. Here, at a very late stage in the Inquiry, Ms D'Arcy's Counsel said that, *"in the cold light of day she accepts that it was an intemperate comment and regrets making it. She was making it in the context of people taking abortion pills themselves but she accepts that she worded it wrong and that it came out wrong."* The Committee considered this expression of regret to have been minimal and was unable to reach any conclusion as to whether Ms D'Arcy actually understands the nature of her professional misconduct.

The Committee noted the submissions on behalf of the Registrar that, whilst the sanction recommendation and decision were matters for the Committee and the Board, he thought that the correct sanction would be Admonishment or Censure.

The Committee also had regard to the PSI's Sanctions Guidance and considered all available sanctions in ascending order. The seriousness of Ms D'Arcy's professional misconduct, allowing for every possible mitigation, would not be met by a sanction of Admonishment. The greater sanctions of conditional registration, suspension or cancellation of registration were not considered necessary, fair or proportionate.

Signed


Dermott Jewell

Dated

20th October 2021.