

Report of the Professional Conduct Committee to  
the Council of the Pharmaceutical Society of Ireland  
in relation to a complaint made pursuant to Part 6 of  
the Pharmacy Act 2007.

## Introduction - Summary Details

Registered Pharmacist:	Mr Denis Finnerty
Pharmacist Registration Number:	7880
Complaint Reference(s):	554.2020
Date of Inquiry:	3 April 2024
Public/Private Hearing:	Public
Meeting Format:	In-person PSI House
Members of Committee:	Mr Dermott Jewell Mr Conor McCrystal MPSI Mr John Naughton
Legal Assessor:	Mr Nicholas Butler S.C
Appearances:	
For the Registrar:	Ms Caoimhe Daly, B.L Ms Dena Keane, Solicitor, Fieldfisher LLP
For the Registrant:	Mr Denis Keane Denis J Keane Solicitors
Registrant in attendance:	Yes
Witnesses (if applicable):	Mr. Ronan Quirke Ms. Dorothy Mockler Mr. Denis Finnerty
Other Attendees:	Deirdre O' Malley D. O'Malley Stenography
In Attendance from the PSI:	Mr. Des Butler, Solicitor, PSI Ms. Clara O'Reilly, Regulatory Executive, PSI

## 1. Subject Matter of the Complaint and Proceedings

The proceedings related to a complaint made by the Registrar in respect of Mr Denis Finnerty MPSI, Registration No. 5084 on 18 February 2020. The Preliminary Proceedings Committee referred the complaint to the Professional Conduct Committee on 13 August 2020, under Section 35(1)(a) and/or 35(1)(b) of the Pharmacy Act 2007, on the grounds of professional misconduct and/ or poor professional performance.

## 2. Applications

An application was made by Mr. Keane on behalf of the Registrant that the Inquiry be held other than in public. Having carefully considered the submissions made and the advice received, the Committee's decision was to refuse the request. Matters considered are outlined in the Application Transcript with the reasons for the Committee's decision provided at page 17 Line 9 to Page 18 Line 8.

## 3. Allegations

That you, while you were a Registered Pharmacist and/or Superintendent Pharmacist at Finnerty Pharmacy Limited trading as Mockler's Pharmacy, Patrick Street, Templemore, County Tipperary, (hereinafter referred to as the 'Pharmacy') on or about 18th July 2019:

1. Failed to ensure that the sale and/or supply of a medicinal product, namely Zirtek Allergy Relief 10mg FC Tablets, being a pharmacy only medicine, was conducted by or under the personal supervision of a registered pharmacist, and/or
2. Such further allegations as may be identified to you in advance of the inquiry. (*NOTE: There were no further allegations*)

And further by reason of the allegation set out at 1 above, you are guilty of poor professional performance in that you failed to meet the standards of competence that may be reasonably expected of a registered pharmacist.

## 4. Evidence & Submissions

At commencement of the Inquiry, **Mr. Keane**, on behalf of the Registrant, confirmed that there was full admission in respect of the Allegation. He confirmed that Mr. Finnerty admitted, as a matter of fact, the detail as set out in Allegation 1 and that those facts amounted to poor professional performance.

In consideration of the early and full admission it was agreed by Ms. Daly and Ms Keane that it would be practical to allow the Inquiry proceed with the presentation to the Committee by Ms. Daly of the evidence in the agreed core book and the evidence of the expert Witness Mr Ronan Quirke, MPSI followed by submissions in regard to mitigation which would facilitate early submissions as to sanction.

It is noteworthy that, **Ms. Daly** in the course of her submission confirmed to the Committee that the Notice of Inquiry referred to matters on the grounds of both poor professional performance and professional misconduct.

However, by reference to the finding in the Report of the expert Mr. Quirke, and his determination that there was not professional misconduct, the Allegation was subsequently now limited only to poor professional performance.

Ms. Daly advised the Committee that Mr Pádraig Corbett, an authorised officer of the PSI, called to Mockler's Pharmacy on the 18<sup>th</sup> of July 2019. He carried out a test purchase at the pharmacy to verify that the sale and supply of medicines took place under the personal supervision of a registered pharmacist and also to conduct a routine pharmacy inspection at the pharmacy.

Mr Corbett witnessed the pharmacy being opened at 9:35 am and at 9:45 am he entered the pharmacy where a staff member, who was vacuuming, stopped the machine and enquired if she could assist him. He requested a box of Zirtek 10mg tablets, paid for them and, as the till receipts were not working at that time, she provided him with a handwritten and stamped receipt. As the receipt was being prepared Mr Corbett noticed that another staff member entered the dispensary (subsequently identified as Ms Alice Brereton, Pharmaceutical Technician). As Mr. Corbett was leaving the pharmacy he saw Mr. Finnerty arrive in his car.

He re-entered the Pharmacy at 9:50 am, identified himself to Mr. Finnerty and advised him that he was there to conduct a routine inspection under Section 67 of the Pharmacy Act 2007.

Mr. Finnerty was cooperative and helpful throughout the inspection from which no matters of concern arose.

A report subsequently issued and the matter was raised regarding the breach of Regulation. In attachment was detail outlining that:

*"I note that on two previous occasions at inspection and/or investigation visits to the pharmacy previously trading as Mockler's Pharmacy on 6th August 2014 and 28th January 2015, authorised officers of the PSI established that the pharmacy was opening and operating and medicines had been sold and/or supplied otherwise than under the personal supervision of a registered pharmacist. I further note the previous prosecution taken by the PSI against Mr Denis Finnerty for offences under the Pharmacy Act 2007 and the court orders dated 9th March 2016 in respect of same".*

**Ms. Daly** opened detail to the Committee of the previous inspections, the related court proceedings, conviction and fines. (Transcript Pages 25 – 33)  
The documentation indicated that there were five visits by PSI inspectors over a five-year period.

Mr. Finnerty explained, in a letter to the PSI that, on this occasion, he was late arriving at the pharmacy at 9:43 am due to roadworks he encountered following his journey to collect goods from his other store in Nenagh. He advised that he had made great efforts, given the events of the past, to bring the store into compliance with all requirements. He took the matter very seriously and this was the first time in a number of years that this had occurred. He gave assurance that this was a *'one-off occurrence'*.

Mr. Byrne, the Registrar, having considered the documentation, responded advising it was his view that there were grounds for a complaint to be made against Mr. Finnerty.  
(Transcript Pages 33 – 37)

**Mr. Quirke**, in evidence reflected upon the provisions of the Act and the role and responsibilities of the Supervising and Superintendent Pharmacist. He advised of his opinion that the Pharmacy and Pharmacists occupy a privileged position within society. They are heavily regulated entities, dispensing medicines that cannot be viewed as normal items of commerce.

The statutory instrument is clear that a pharmacy cannot open in the absence of a pharmacist.

Mr. Quirke's consideration regarding Professional Misconduct was that it involves issues such as moral turpitude, fraud and other definitions. At no point did he consider the practice by the Registrant, in this case, met any of these definitions. In his view, the facts alleged did, however, amount to Poor Professional Performance in all the circumstances of the case and its background, including the two authorised officer inspections in 2014 and 2015. In addition, he said that the threshold of seriousness had been met.

**Mr. Keane** sought to raise the question of context and the responsibilities of staff members in terms of commercial operation, duties and longevity of employment.

Mr. Quirke was clear that it was the responsibility of the pharmacist to ensure policies and procedures were followed. If they were not then the burden of responsibility, while it may seem onerous, was nonetheless, the responsibility of the individual as a registered pharmacist.

**Mr. Finnerty** gave evidence of the events that led to his delay in arriving at the pharmacy on the day in question. He acknowledged the privilege of his position in society. He did not know how it (*the pharmacy being opened*) had happened. He considered the SOP detailing how the premises could never be opened without his, or any pharmacist present, as being operational and robust and effective at the time. He had considered that the SOP was now 'strengthened' as were key-holding provisions and provisions in staff and HR management.

*"I thought that in discussions we had with our staff and with everybody attached to the place, post the convictions and, I mean, my staff knew that I had been convicted of both offences, that an incident like that wouldn't arise again".*

*"I thought that I had given enough information to the staff that they would realise the seriousness of having the shop open without a pharmacist being present".*

As a means of progressing, Mr. Finnerty advised that he was exploring the means for staff training to be delivered by a pharmacist from another pharmacy.

**Dorothy Mockler** (Mr. Finnerty's wife) gave evidence that there was a recognised need to improve standard operations following the visit in 2014. She considered that she and Mr. Finnerty were very relaxed in their relationship with staff. She had known some current staff members since she was a child visiting what was then her father's pharmacy. One staff member had been working in the pharmacy since her teens and now, some 50 years later, was still employed. Under these conditions she described what was a different type of relationship between employer and employee. It was a challenge to be forceful with them.

In terms of staff training she admitted that it was administered internally, again, by Mr Finnerty and herself and that - *"they obviously weren't very well adhered to and how well our message got across is kind of evident in things that have happened"*

## 5. Legal Assessor's Advice

**Mr. Butler**, on the matter of findings, advised the Committee and all present that the single allegation would be found to have been proven as to fact and the reasons for that finding would be the admission made at the outset on behalf of Mr Finnerty and also through the documentary evidence admitted by agreement.

The Committee could refer to specific aspects of the poor professional performance as it saw fit, either for the purpose of the finding or subsequently, for the purpose of considering what would be the appropriate sanction recommendation.

## 6. Submissions as to Sanction

**Ms Daly** advised the Committee that she considered it to be significant that there was a conviction for the same conduct for two previous incidents. The cumulative nature was also of significance. The SOP had not been amended, there was no record of the training advised to have been delivered and, in terms of what had been advised in any training, it was clear that staff were not listening. Despite the backdrop of a criminal conviction they still opened the premises. In terms of sanction one must look at upholding proper standards and confidence in the profession with public protection and confidence in crucial focus. It was notable that this was a repeated failure. With consideration of mitigation and leniency it was a matter for the Committee to determine the appropriate sanction. The Registrar considered that censure was potentially the appropriate sanction.

**Mr Keane** asked the Committee to exercise leniency. There had been, he suggested, conscientious effort to ensure that there was no recurrence of the issue. Mr Finnerty had expressed remorse and regret for the incidents in 2014 and 2015. There was no dispute that he had the obligation to ensure that the premises should not be open. He acknowledged that there should have been a more assertive approach taken with staff. He acknowledged the suggestion of the Registrar to censure as a penalty and considered this to be inevitable.

## 7. Advice of Legal Assessor on Sanction

**Mr. Butler** advised the Committee that a full range of sanctions was open to it. He outlined certain of the authorities that had set out the purposes of sanction by reference to the authorities, the Sanctions Guidance of the PSI and the regulatory framework.

It was important to send the appropriate message as to the nature and extent of the poor professional performance to act as a deterrent against any recurrence. Poor professional performance must meet the threshold of seriousness and within that there was a spectrum from the least serious to the most serious. There was significant mitigation here by consensus.

Public protection was the paramount consideration and, notably, in the sense of making sure that as far as possible the choice of sanction can reassure the public of the serious view the PSI takes of such findings so as to promote and maintain public confidence in pharmacists, and the way in which they are regulated by the PSI.

## 6. Decision of the Committee

### **FINDINGS OF THE COMMITTEE:**

The Committee applied the criminal standard of proof, namely, beyond reasonable doubt, to all findings.

The Notice of Inquiry comprised the following single allegation:

#### **Allegation 1:**

*“That you, while you were a Registered Pharmacist and/or Superintendent Pharmacist at Finnerty Pharmacy Limited trading as Mockler’s Pharmacy, Patrick Street Templemore, Co. Tipperary (hereinafter referred to as the “**Pharmacy**”), on or about 18 July 2019:*

*1. failed to ensure that the sale and/or supply of a medicinal product, namely Zirtek Allergy Relief 10mg FC Tablets, being a pharmacy only medicine, was conducted by or under the personal supervision of a registered pharmacist*

*And further by reason of the allegation set out at 1 above, you are guilty of poor professional performance in that you failed to meet the standards of competence that may reasonably expected of a registered pharmacist.”*

**FINDING OF FACT:**

The Committee found this allegation to have been proven.

**Reasons:**

This allegation was admitted on behalf of Mr Finnerty. The Committee also relied on the material in the agreed Core Book.

**FINDING OF POOR PROFESSIONAL PERFORMANCE:**

The Committee found this allegation to have been proven.

**Reasons:**

This allegation was admitted on behalf of Mr Finnerty. The Committee also relied on the material in the agreed Core Book, including the Report of the expert Witness Mr Ronan Quirke, MPSI and his evidence to the Committee.

## 8. Committee's Recommendation on Sanction

The Committee carefully considered the submissions and advice in relation to sanctions in the light of its findings.

It sought a sanction to meet the paramount objective of protecting the public, not only in terms of the risks associated with the poor professional performance found but also to maintain public trust and confidence in the pharmacists and in the PSI. The sanction should send the appropriate message to Mr Finnerty and to the wider profession as to the seriousness of the finding. It should also show leniency where possible, based on any mitigating features identified and it must be proportionate. The Committee followed the PSI's Sanction Guidance.

The Committee recommends the following sanctions:

1. That, under section 48(b)(1) of the Act, Mr Finnerty be censured for his poor professional performance.



2. That, under section 48(b)(ii) of the Act, the following conditions be attached to Mr Finnerty's registration:
  - a. That he must undertake a professional development programme ("the programme") under the guidance and supervision of a pharmacist approved in advance by the PSI.
  - b. The object of the programme will be to address Mr Finnerty's professional performance overall but with particular emphasis on the shortcomings identified in the Committee's findings and in the report of the expert witness.
  - c. Details of the programme will be drawn up by the approved pharmacist in consultation with Mr Finnerty and submitted to the PSI for approval within three months of these conditions taking effect. These details will identify the targets to be achieved by Mr Finnerty according to a specified timetable.
  - d. The approved pharmacist will submit a detailed quarterly report to the PSI on Mr Finnerty's progress and achievement (or otherwise) of the stated targets and his successful completion of the programme.
  - e. The programme must be completed within two years of the date on which it is approved.
  - f. The Council may review the timetables for achievements of the targets or completion of the programme.
  - g. Mr Finnerty must bear all costs and expenses of or incidental to the implementation of these conditions.

Reasons:

The Committee took a serious view of the finding of poor professional performance, which followed two episodes of similar wrongdoing on his part in 2014 and 2015. These prior episodes were the subject of a PSI prosecution in the District Court. Mr Finnerty was convicted and a substantial fine was imposed.

Notwithstanding Mr Finnerty's evidence (and that of his wife) to the effect that he was committed to avoiding any repetition of his behaviour, it was remarkable that there was no evidence of any attempt by him to establish from his staff what had gone wrong on any of

these occasions. He said he did not know how the pharmacy came to be opened and a pharmacy-only medicinal product sold on 18 July 2019 without a pharmacist being present.

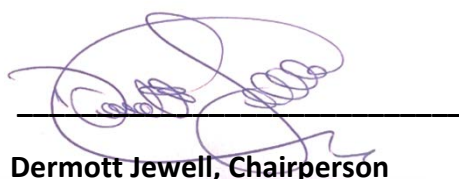
There was no evidence of any steps taken by him from 2019 to date to minimise the risk of any further recurrence, although, in closing, his solicitor made general reference to “farming out the staff training to ensure that somebody who has some professional and other distance can go through the SOP’s with the staff...” In his own evidence Mr Finnerty said in general terms that this was something he was considering.

His admissions and co-operation with PSI processes were mitigating features and, on their face, consistent with insight. However, when questioned, his insight appeared to be limited to an acceptance that a particular SOP had not been adequately communicated to his staff and his occasional failure to turn up for work at 9:30am. Accordingly, the findings and his limited insight give rise to significant concerns about public protection and the public interest in the broader sense of maintaining public trust and confidence in pharmacists and the way they are regulated.

The Committee considered the submission of the Registrar to the effect that a censure alone would be an appropriate sanction. The Committee was not persuaded that this would adequately address the seriousness of the poor professional performance found or Mr Finnerty’s limited understanding of his wrongdoing. Neither would it send an adequate or appropriate message to Mr Finnerty and the wider profession or foster public confidence in pharmacists or in the PSI.

The recommended conditions, designed to identify and effectively address the root causes of Mr Finnerty’s poor professional performance, are proportionate in the Committee’s view and the minimum sanction it considers necessary and appropriate in all the circumstances of the case.

**SIGNED:**



**Dermott Jewell, Chairperson**

**DATE:**

**30 May 2024**