

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 Pharmacy:	Lanesboro Pharmacy Limited t/a Johnston's Pharmacy
Pharmacy Registration Number:	7022
Complaint Reference(s):	729.2023
Date of Application:	17 October 2024
Public/Private Hearing:	Public
Meeting Format:	PSI House, Fenian Street, D2
Members of Committee:	Mr Dermott Jewell Mr David McNally MPSI Ms Celine Newman
Legal Assessor:	Ms Lorna Lynch S.C
Appearances:	
For the Registrar:	Ms Caoimhe Daly B.L Ms Aisling Ray, Fieldfisher LLP
For the Registrant:	Mr Conor Cahill B.L. Ms Maria Dillon, Horan & Sons
Registrant in attendance:	Yes
Witnesses (if applicable):	
Other Attendees:	Ellen Ward, D. O'Malley Stenography
In Attendance from the PSI:	Ciaran Lyng, Solicitor, PSI Anna Malone, Regulatory Executive, PSI

Documentation:

Exhibit 1: Core Book

Exhibit 2: Application Documents Bundle

Exhibit 3: Booklet of Records obtained, Lanesboro Pharmacy 07/04/2021 and Castlerea and Teffia Park Pharmacies 13/05/2021 and 14/05/2012.

Exhibit 4: SOP – Pharmacy Temporary Closure or Emergency Absence of a Pharmacist.

Exhibit 5: ROTA –Pharmacies – January – April 2021.

1. Subject Matter of the Complaint and Proceedings

This is a complaint of the Registrar of PSI in respect of Mr Gareth Johnston MPSI (8099). The complaint was referred by the Preliminary Proceedings Committee on 20 June 2023 to this Committee on grounds of professional misconduct and/or poor professional performance and/or a contravention of the Pharmacy Act 2007, as set out in Sections 35(1)(a) and 35(1)(b) and 35(1)(f) of the Act respectively.

2. Nature of the Complaint

Following its consideration of a complaint of the Registrar of the PSI, dated 20 December 2022, it was referred forward on 20 June 2023, by the Preliminary Proceedings Committee pursuant to Section 40(1)(b)(i) of the Act to the Professional Conduct Committee.

A Notice of Inquiry issued in respect of Lanesboro Pharmacy Limited trading as Johnston's Pharmacy, Lanesboro, County Longford, on the grounds as set out in Section 36(1)(b) and/or Section 36(1)(e) of the Act.

The allegations to be considered at the Inquiry against Lanesboro Pharmacy Limited trading as Johnston's Pharmacy, Lanesboro, County Longford, [Company Registration Number: 412693] (the "**Pharmacy**"), a registered retail pharmacy business:

1. That on or about 7 April 2021, Mr Gareth Johnston and/or Lanesboro Pharmacy Limited, being pharmacy owners of the Pharmacy:

a. Permitted and/or caused to be supplied one or more of the prescription-only and/or pharmacy only medications outlined at **Appendix A** otherwise than by or under the personal supervision of a registered pharmacist; and/or

b. Failed to ensure that an accurate, ongoing, contemporaneous and retrievable record of any registered pharmacist responsible for the registered retail pharmacy business and/or for the personal supervision of the sale and supply of medicinal products at the premises, was maintained at the Pharmacy, contrary to Regulation 5(1)(c) of the Regulation of Retail Pharmacy Businesses Regulations 2008 and 2016; and/or

2. Such further or other allegations as may be identified to you in advance of the Inquiry.

AND FURTHER by reason of one or more of the allegations and sub-allegations set out at 1(a) and/or 1(b) above, taken individually and/or cumulatively and/or in combination, Mr Gareth Johnston, being a Pharmacy Owner of the Pharmacy:

a. has committed misconduct such that were he to apply to the Council of the PSI 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 sub-allegations set out at 1(a) and/or 1(b) above, taken individually and/or cumulatively and/or in combination, Lanesboro Pharmacy Limited, being a Pharmacy Owner,

b. has committed misconduct such that were Lanesboro Pharmacy Limited to apply to the Council of the PSI 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 the misconduct of Mr Johnston and/or Lanesboro Pharmacy Limited, as referred to at 1(a) and/or 1(b) above, were Mr Johnston and/or Lanesboro Pharmacy Limited to apply to the Council of the PSI for registration as a pharmacist, the Council of the PSI would be likely to refuse to register one or both of them.

AND FURTHER by reason of one or more of the allegations and sub-allegations at 1 above, Lanesboro Pharmacy Limited has contravened a provision of the Act being Section 28 of the Act.

AND FURTHER by reason of one or more of the allegations and sub-allegations at 1 above, Mr Johnston has contravened a provision of the Act, which pursuant to Section 52 of the Regulated Professions (Health and Social Care) (Amendment) Act 2020 includes a statutory instrument made under the Act, being Regulation 5(c) of the Regulation of Retail Pharmacy Business Regulations 2008, S/I 488/2008.

AND TAKE NOTICE that the nature of the evidence proposed to be considered at the Inquiry and the names of the witnesses whom it is the intention of the Registrar to request to be in attendance at the Inquiry for the purpose of giving evidence are to be found in the document which is attached to this Notice of Inquiry.

AND TAKE NOTICE that you, or any other person representing you, will be given an opportunity of being present at the Inquiry, of being heard and of calling evidence. If you do not attend or are not represented, the Inquiry may proceed in your absence.

AND TAKE NOTICE that the Professional Conduct Committee shall have the power to award and authorise the recovery of costs.

AND FURTHER TAKE NOTICE that, following the Inquiry and Report by the Professional Conduct Committee, pursuant to section 48 of the Act, the Council shall, if the Committee finds that the Complaint is substantiated, impose one or more of the following disciplinary sanctions on you:-

1. An admonishment or censure.
2. The attachment of conditions to your registration, which may include restrictions on practice.

3. The suspension of your registration for a specified period.
4. The cancellation of your registration.
5. A prohibition for a specified period on applying for restoration to the Register.

3. Submissions and Applications

Application – (Exhibit 2)

Ms Daly made an application for an amendment to the Notice of Inquiry. She confirmed at the outset that there was consent from Mr Cahill and referred the Committee to a bundle of documents (Exhibit 2). The alteration was made to ensure the Notice of Inquiry reflected the provisions of the Act. (Transcript Page 7 Line 13 to Page 9 Line 2).

Ms Daly explained that the Regulation provides for any "other" registered pharmacist. This provides, in practical terms, that when one is the superintendent pharmacist in a pharmacy, and is also the registered pharmacist on duty on that day, under the Regulation, it is not required to sign the Duty Register. However, when another registered pharmacist is operating the pharmacy on that day that person obliged to sign the Duty Register.

The application to amend Allegation 1(b) to include the word '**other**' and read as indicated below was approved as follows:

"Failed to ensure that an accurate, ongoing, contemporaneous and retrievable record of any other registered pharmacist responsible for the registered retail medicinal products at the premises....."

It was subsequently confirmed that the consent was forthcoming, and the application was made, in regard to insertion of the word '**other**' in the corresponding parts of Allegations 2 and 3 of the Notice of Inquiry.

Submissions

Ms Daly read the Notice of Inquiry and the allegations contained therein. She advised that there was a position being adopted on behalf of the Registrant which Mr Cahill could outline to the Committee at the outset.

Mr Cahill addressed the Committee and confirmed that, as set out in correspondence dated the 10th of October, Mr Johnston admitted the factual allegations as set out at paragraphs 1(a), 1 (b), 2 and 3 of the Notice of Inquiry.

It was further admitted that the allegations amounted to Professional Misconduct in respect of a breach of Principles 1, 2 and 5 of the Code of Conduct for Pharmacists.

It was further admitted that the allegations amounted to Poor Professional Performance and a breach of the Pharmacy Business Regulations 2008, Regulation 5 (c).

Ms Daly confirmed that the Registrar had withdrawn the allegation, in respect of a breach of Principal 7 of the Code of Conduct for Pharmacists.

The Committee was provided with detail of the issues that gave rise to the Inquiry.

It was indicated to the Committee that the relevant documentation confirmed that Mr Gareth Johnston is the supervising and superintendent pharmacist of Lanesboro Pharmacy and other pharmacies and he is the director of the company which owns a number of pharmacies and is also the company secretary.

The background to the complaint was outlined whereby the PSI received an anonymous complaint that a pharmacy student was being left alone in Lanesboro Pharmacy and was dispensing prescription medications to customers arriving into the pharmacy. Mr Shane McGlynn, an authorised officer of the PSI, attended at the pharmacy and made a test purchase, of a pharmacy-only medication, Motilium, at approximately 12:53 pm in Lanesboro Pharmacy on the 7th of April 2021. The purchase was facilitated by the 2 staff members' present – one being a technician and over-the-counter assistant and the other, [REDACTED], a pharmacy intern awaiting registration.

[REDACTED] confirmed to Mr McGlynn that he was not a registered pharmacist but was waiting to be registered. He further confirmed that he was working on his own, in Lanesboro Pharmacy, in the absence of a pharmacist, from 9:30 am that morning. In the course of investigation it was determined that 21 items of medication had been supplied in the absence of a pharmacist. (Exhibit 2 – Appendix A – Pages 4-5).

Specifically, in regard to his presence in the Pharmacy that morning, when questioned he advised that he had been working part-time for approximately 10 years. He knew Mr Johnston for many years and had completed an 8-month placement in Lanesboro Pharmacy. He had failed his pre-registration examination in October 2020 and sat the repeat examination in February 2021. Having successfully passing that exam he submitted his Registration Application documentation to the PSI on the 24th of March and was awaiting confirmation. He had been working in Johnston's full-time since his intern placement but was not employed as a pharmacist.

Mr Johnston, subsequently confirmed to Mr McGlynn, outlined how, on the morning of April 7th, 2021, he had been in Lanesboro when another pharmacist in the group, [REDACTED], had advised an urgent medical matter. He therefore left Lanesboro Pharmacy to go and provide cover in the alternative pharmacy at approximately 9:30 am that morning.

Mr McGlynn, in the normal course of his inspection, reviewed the duty register, the dispensing and till records and what was the order of business in the pharmacy. His review of the duty register indicated a large number of gaps in the record of professional cover from January to April 2021. This, in turn, raised concerns as to who was working, in which Pharmacy, on a given date.

Ms Daly advised the Committee that the PSI decided to initiate further investigations and attended the other pharmacies for which Mr Johnston held responsibility and ownership and took up the rotas and duty registers in relation to each of those pharmacies. Following initial investigation there were approximately 57 dates for which there were no entries in Duty Registers. Ultimately, following a significant, lengthy and detailed exercise, the findings formed the basis of the allegations within the Notice of Inquiry.

Regarding Lanesboro Pharmacy, at Allegation 1(b), it was ultimately discerned that there were at least three dates where there was a failure to ensure that there was a record of any other registered pharmacist at the premises:

Regarding Castlerea Pharmacy, at Allegation 2, it was ultimately determined that there were at least three dates that were unaccounted for;

Regarding Teffia Park Pharmacy, at Allegation 3, there were at least two dates on which there was no record of a registered pharmacist being on the premises (The Committee refers Council to Exhibit 3 for review in context).

Interviews were given, under caution, by both Mr Johnston and [REDACTED], which provided significant detail of all matters the subject of the investigation and subsequent Inquiry (*Core Book – Pages 69-70, 71-72, 102 – 108, 114 – 125*).

The Committee was further advised regarding a District Court prosecution in this matter related to the sale and supply of medicinal products in the absence of a pharmacist (the subject of Allegation 1(a) and in which an admission was made. The Committee was advised of seven convictions, with others taken into account, each of which gave rise to a fine of €500 together with an order for costs of the PSI in the sum of €4,920 plus VAT.

Mr Cahill referred to the significant measures introduced following the inspections and events that followed and, in particular, the Standard Operating Procedures introduced in June 2021 (Exhibit No. 4), the detailed documentation provided to assist in transparency and clarification in regard to the production of rotas in significant advance and he referred to rotas having been prepared in advance on the assumption that [REDACTED]'s registration process would have been concluded by the date upon which the initial inspection was carried out (Exhibit No. 5) and (Transcript Page 123 Line 26 – Page 128 Line 29).

Ms Daly, in the circumstances where there were full admissions to facts, professional misconduct, poor professional performance and breaches of the code, considered this to reflect that the expert evidence was not necessary to prove the allegations. However, in the course of a review of the full report of Mr O’Hourihane, it was clarified that on foot of the amendment to the Notice of Inquiry, certain of the findings in the expert Report were not being relied upon and in particular any criticism of Mr Johnston for not having entered his name on the Duty Register should be ignored by the Committee as it was subsequently agreed that there was no legal requirement for him to do so.

Mr Cahill, in consideration of the full admissions, advised that he did not propose to call evidence.

4. Legal Assessors Advice

Ms Lynch advised the Committee that it was appropriate to confine its considerations to the allegations as set out in the Notice of Inquiry. The Committee was entitled to have regard to the factual matrix concerning those allegations and, in particular, the detail that Mr McGlynn set out in terms of the difficulties experienced by him and his colleagues in establishing the extent, nature and number of inaccuracies to be engaged with across all of the pharmacies. Ms Lynch referred to the admissions made were on behalf of both the Pharmacist and advised the Committee that in circumstances where those admissions were made on behalf of the Registrant with the benefit of legal representation, the Committee could rely upon those admissions.

5. Committee's Decision

Findings of the Professional Conduct Committee ('PCC') (Circulated in advance of submissions to sanction)

Lanesboro Pharmacy Limited

Allegation 1(a)

- 1. That on or about 7 April 2021, Mr Gareth Johnston and Lanesboro Pharmacy Limited being pharmacy owners of the Pharmacy**
 - a. Permitted and/or caused to be supplied one or more of the prescription-only and/or pharmacy only medications outlined at Appendix A otherwise than by or under the personal supervision of a registered pharmacist**

Allegation 1(a) - Proven as to fact – YES

The Committee found allegation 1 (a) proven as to fact by reason of the following:-

- Undisputed evidence that Gareth Johnston is a Director of Lanesboro Pharmacy Limited within the meaning of Section 36(3) of the Pharmacy Act 2007
- Admission as to fact made on behalf of Gareth Johnston and Lanesboro Pharmacy Limited and set out in detail by Counsel for Gareth Johnston and Lanesboro Pharmacy Limited;
- Authorised Officer's Report of Shane McGlynn dated 14 October 2022 including appendices and statements contained in the agreed Core Book, Exhibit 1;
- Dispensing records for Lanesboro Pharmacy on 7 April 2021 contained in the agreed Core Book, Exhibit 1;
- Oral evidence of Shane McGlynn given to the Committee on 17 October 2024

Allegation 1(a) - Proven that Gareth Johnston had committed misconduct such that were he to apply to Council of the PSI for registration as a pharmacist, the Council of the PSI would be likely to refuse to register him - YES

- Admission made on behalf of Gareth Johnston and Lanesboro Pharmacy Limited and set out in detail by Counsel for Gareth Johnston and Lanesboro Pharmacy Limited

Allegation 1(a) -Breach of Act by Lanesboro Pharmacy Limited– YES

- Admission made on behalf Lanesboro Pharmacy Limited and set out in detail by Counsel for Lanesboro Pharmacy Limited.
- Section 28 of the Pharmacy Act 2007

Allegation 1(b)

1. That on or about 7 April 2021, Mr Gareth Johnston and Lanesboro Pharmacy Limited being pharmacy owners of the Pharmacy
 - b. Failed to ensure that an accurate, ongoing, contemporaneous and retrievable record of any other registered pharmacist responsible for the registered retail pharmacy business and/or the personal supervision of the sale and supply of medicinal products at the premises was maintained at the Pharmacy, contrary to Regulation 5(1)c of the Regulation of Retail Pharmacy Businesses Regulations 2008 and 2016 and/or

Allegation 1(b) - Proven as to fact – YES

The Committee found allegation 1 (b) proven as to fact by reason of the following:-

- Undisputed evidence that Gareth Johnston is a Director of Lanesboro Pharmacy Limited within the meaning of Section 36(3) of the Pharmacy Act 2007
- Admission as to fact made on behalf of Gareth Johnston and Lanesboro Pharmacy Limited and set out in detail by Counsel for Gareth Johnston Lanesboro Pharmacy Limited;
- Authorised Officer's Report of Shane McGlynn dated 14 October 2022 including appendices and statements contained in the agreed Core Book, Exhibit 1;
- Extracts from the Duty Register for the Lanesboro Pharmacy, Exhibit 3;
- Oral evidence of Shane McGlynn given to the Committee on 17 October 2024

Allegation 1(b) - Proven that Gareth Johnston had committed misconduct such that were he to apply to Council of the PSI for registration as a pharmacist, the Council of the PSI would be likely to refuse to register him - YES

- Admission made on behalf of Gareth Johnston and Lanesboro Pharmacy Limited and set out in detail by Counsel for Gareth Johnston and Lanesboro Pharmacy Limited

Allegation 1(b) -Proven that Gareth Johnston as pharmacy owner has failed to comply in his capacity as pharmacy owner with a provision of the Act– YES

- Admission made on behalf of Gareth Johnston and Lanesboro Pharmacy Limited and set out in detail by Counsel for Gareth Johnston and Lanesboro Pharmacy Limited
- Extracts from the Duty Register for the Lanesboro Pharmacy, Exhibit 3;
- Section 52 of the Regulated Professions (Health and Social Care) Amendment Act 2020 and Regulation 5c of the Regulation of Retail Pharmacy Business Regulations 2008 (SI 488/2008)

6. Sanction

Decision on sanction

The Committee reconvened on 29 November 2024 in the presence of the parties having given its decision on findings as outlined above. At that time the Committee heard submissions in relation to sanction following which the Committee closed the Inquiry and completed this report for submission to the Council of the PSI.

Submissions as to Sanction

The Registrar's submissions:

Ms Daly addressed the issue of a sanction to be imposed in respect of Lanesboro Pharmacy. She stated that Mr Johnston and the Pharmacy must be treated as separate registered individuals and that separate sanctions were appropriate in the circumstances. Ms Daly submitted on behalf of the Registrar that conditions attached to pharmacy whereby Mr Johnston could not act as supervising or superintendent pharmacist for a period after suspension was appropriate together with an audit process in respect of the Pharmacy and censure.

The Registrant's submissions:

Mr Cahill referred to his submissions in the linked matter on behalf of the pharmacist, Mr Johnston. He referred to the applicable sanction principles and submitted that the proposals on behalf of the pharmacy were proportionate and appropriate in the circumstances. He referred to the fact that neither the pharmacist nor the pharmacy had come to the attention of the PSI before.

Legal assessors advice on sanction

Ms Lynch advised the Committee that the Council is the ultimate decision maker on sanction but the practice had developed for the Committee to include recommendations as to sanction in the report to the Council. Ms Lynch referred to the legislative framework, the relevant principles and the meaning of protection of the public. Ms Lynch stated that it was appropriate for the Committee to have the PSI Sanctions Guidance. Ms Lynch referred to the submissions by Ms Daly and Mr Cahill and stated that the ultimate decision regarding a recommendation as to sanction was for the Committee. Ms Lynch advised the Committee on the approach to sanction which is to start at the lowest level of sanction and consider if it sufficient to meet the circumstances of the case and if not, to move on to the next level of sanction. Ms Lynch also referred to the principles of proportionality and leniency and she

advised that the mitigating and aggravating factors that were for the Committee to consider. Ms Lynch referred to the requirement to consider the sanction to be imposed on Mr Johnston and the Pharmacy as separate matters.

Committee Recommendations on Sanction

- a. That Mr Johnston will not act as Supervising Pharmacist of Johnston's Pharmacy Lanesboro (the "Pharmacy") for a period of 2 months to commence after a 2 month period of suspension has been completed and a new Supervising Pharmacist will be appointed for this total period of 4 months.
- b. That Mr Johnston will not act as Superintendent Pharmacist of the Pharmacy for a period of 2 months to commence after a 2 month period of suspension has been completed and a new Supervising Pharmacist will be appointed for this total period of 4 months.
- c. The Pharmacy is censured.
- d. The Pharmacy will be responsible for the costs associated with compliance with these conditions.

Reasons for recommendation:

The Committee had regard the very serious nature of the allegations which were admitted by the Pharmacy. The finding regarding allegation 1(a) related to the fact that the pharmacy was opened without a registered pharmacist being present and the finding of the supply of medications without the supervision of a registered pharmacist. The Committee also noted the allegation concerning the deficiencies in the Duty Register of Lanesboro Pharmacy.

The Committee considered that there were a number of aggravating factors present in the case including the period during which the Pharmacy remained open without a registered pharmacist which resulted in a significant number of medications being supplied to numerous customers. The Committee considered the nature and extent of the deficiencies in the duty registers for the Pharmacy which resulted in a lack of clarity about what pharmacist was on duty in the pharmacies on specific dates.


The Committee also had regard to a number of mitigating factors in the case. In particular, the Committee had regard to the admissions made on behalf of the Pharmacy and the Committee was impressed by the comprehensive steps taken by the Pharmacist to address the issues, the new pharmacy premises and the improvements in the practices within the Pharmacy. The Committee acknowledged the plea of guilty entered on behalf of the company in the criminal proceedings and the financial costs incurred but considered that these matter had little weight in considering the sanction to recommend in respect of the Pharmacy in these regulatory proceedings.

The Committee were of the view that the Pharmacy should be censured but that sanction alone was not sufficient to address the seriousness of the allegations.

The Committee also considered attaching a condition to the Pharmacy's registration and was of the view that a censure together with a period of conditional registration was proportionate in the circumstances. The Committee was of the view that it was appropriate to put a period of conditional registration in place after suspension to protect the public and ensure that Mr Johnston could return to fully safe practice in the Pharmacy on a phased basis. The Committee was of the view that a lesser sanction would not adequately protect the public interest and would fail to act as a sufficient deterrent for the Pharmacy or wider profession.

The Committee acknowledged that the recommended sanction would have a significant effect on the Pharmacy. The Committee was cognisant of the obligation of the requirement to be as lenient as possible to the Pharmacy in the circumstances but that must be balanced with the requirement of the protection of the public and the Committee is of the view that the recommended sanction does not go further than necessary.

SIGNED:



Dermott Jewell, Chairperson

DATE: 06 February 2025