

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 Gareth Johnston MPSI
Pharmacist Registration Number:	8099
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 Mr Gareth Johnston MPSI (Registration No. 8099) outlining the allegations to be considered at the Inquiry against him as a registered pharmacist and/or Superintendent Pharmacist:

1. *That on or about 7 April 2021, you, being the Supervising and/or Superintendent Pharmacist of Lanesboro Pharmacy Limited trading as Johnston's Pharmacy, Lanesboro, County Longford (RPB 7022) ("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 (other) 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. *That on or about 13 and/or 14 May 2021, you, being the Superintendent Pharmacist of Loyalside Limited, trading as Allcare Pharmacy, Barrack Street, Castlerea, County Roscommon (RPB 7847), 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 for the personal supervision of the sale and supply of medicinal products at the premises, was maintained at Allcare Pharmacy, contrary to Regulation 5(1)(c) of the Regulation of Retail Pharmacy Businesses Regulations 2008 and 2016; and/or*
3. *That on or about 13 and/or 14 May 2021, you, being Superintendent Pharmacist of Salsbury Healthcare Limited trading as Johnston's Allcare Pharmacy, Teffia Park, Longford Town, County Longford (RPB 7113), 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 for the personal supervision of the sale and supply of medicinal products at the premises, was maintained at Johnston's Allcare Pharmacy, contrary to Regulation 5(1)(c) of the Regulation of Retail Pharmacy Businesses Regulations 2008 and 2016; and/or

4. *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 and/or 2 and/or 3 above, taken individually and/or cumulatively and/or in combination, 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. in breach of Principle 1 and/or 2 and/or 5 and/or 7 of the Code of Conduct for Pharmacists (2019 version); and/or*

AND FURTHER *by reason of one or more of the allegations and sub-allegations set out at 1 and/or 2 and/or 3 above, taken individually and/or cumulatively and/or in combination, 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.*

AND FURTHER *by reason of one or more of the allegations and sub-allegations set out at 1(b) and/or 2 and/or 3 above, taken individually and/or cumulatively and/or in combination, you have 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.*

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 the 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 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's in significant advance and he referred to rota's 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 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')

Allegation 1 (a)

- 1. That on or about 7 April 2021, you being the Supervising and/or Superintendent Pharmacist of Lanesboro Pharmacy Limited trading as Johnston's Pharmacy, Lanesboro, County Longford (RPB 7022) ("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:-

- Admission as to fact made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- 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 the 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 as to professional misconduct in that Gareth Johnston acted in a manner that is infamous or disgraceful in a professional respect - YES

The Committee found the allegations to be proven as to professional misconduct by reason of the following:-

- Admission as to professional misconduct made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O'Hourihane dated 18 October 2000.

Allegation 1(a) - Proven as to professional misconduct in that Gareth Johnston acted in breach of Principle 1 and 2 and 5 of the Code of Conduct for Pharmacists (2019 version) - YES

The Committee found the allegations to be proven as to professional misconduct by reason of the following:-

- Admission as to professional misconduct made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O'Hourihane dated 18 October 2000;
- Provisions of principle 1 and 2 and 5 of the Code of Conduct for Pharmacists (2019 version).

Allegation 1(a) - Proven as to Poor Professional Performance – YES

The Committee found the allegations to be proven as to poor professional performance by reason of the following:-

- Admission as to poor professional performance made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston

- Undisputed expert evidence contained the Expert Report of Keith O’Hourihane dated 18 October 2000.

Allegation 1 (b)

1. ***That on or about 7 April 2021, you being the Supervising and/or Superintendent Pharmacist of Lanesboro Pharmacy Limited trading as Johnston’s Pharmacy, Lanesboro, County Longford (RPB 7022) (“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 the allegations to be proven as to fact by reason of the following:-

- Admission as to fact made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- 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 as to professional misconduct in that Gareth Johnston acted in a manner that is infamous or disgraceful in a professional respect- YES

The Committee found the allegations to be proven as to professional misconduct by reason of the following:-

- Admission as to professional misconduct made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O’Hourihane dated 18 October 2000.

Allegation 1(b) - Proven as to professional misconduct in that Gareth Johnston acted in breach of Principle 1 and 2 and 5 of the Code of Conduct for Pharmacists (2019 version) - YES

The Committee found the allegations to be proven as to professional misconduct by reason of the following:-

- Admission as to professional misconduct made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O’Hourihane dated 18 October 2000;

- Principle 1 and 2 and 5 of the Code of Conduct for Pharmacists (2019 version).

Allegation 1(b) - Proven as to Poor Professional Performance – YES

The Committee found the allegations to be proven as to poor professional performance by reason of the following:-

- Admission as to poor professional performance made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O’Hourihane dated 18 October 2000.

Allegation 1(b) -Contravention of the Pharmacy Act 2007– YES

The Committee found the allegation of contravention of the 2007 Act to be proven as by reason of the following: -

- Admission of contravention of the Act made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O’Hourihane dated 18 October 2000.
- 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)

Allegation 2

- 2. That on or about 13 and/or 14 May 2021 you, being the Superintendent Pharmacist of Pharmacy, Loyalside Limited trading as Allcare Pharmacy, Barrack Street, Castlerea, County Roscommon (RPB 7847) 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 2 - Proven as to fact – YES

The Committee found the allegation to be proven as to fact by reason of the following: -

- Admission as to fact made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- 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 Castlerea Pharmacy, Exhibit 3
- Oral evidence of Shane McGlynn given to the Committee on 17 October 2024;

Allegation 2 - Proven as to professional misconduct in that Gareth Johnston acted in a manner that is infamous or disgraceful in a professional respect- YES

The Committee found the allegations to be proven as to professional misconduct by reason of the following:-

- Admission as to professional misconduct made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O’Hourihane dated 18 October 2000.

Allegation 2 - Proven as to professional misconduct in that Gareth Johnston acted in breach of Principle 1 and 2 and 5 of the Code of Conduct for Pharmacists (2019 version) - YES

The Committee found the allegations to be proven as to professional misconduct by reason of the following:-

- Admission as to professional misconduct made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O’Hourihane dated 18 October 2000.
- Principle 1 and 2 and 5 of the Code of Conduct for Pharmacists (2019 version)

Allegation 2 - Proven as to Poor Professional Performance – YES

The Committee found the allegations to be proven as to poor professional performance by reason of the following:-

- Admission as to poor professional performance made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O’Hourihane dated 18 October 2000.

Allegation 2 - Contravention of the Pharmacy Act 2007– YES

The Committee found the allegation of contravention of the 2007 Act to be proven by reason of the following: -

- Admission as to contravention of the Act made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O’Hourihane dated 18 October 2000.
- 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)

Allegation 3

- 3. That on or about 13 and/or 14 May 2021 you, being the Superintendent Pharmacist of Salsbury Healthcare Limited trading as Johnston's Allcare Pharmacy, Teffia Park, Longford Town, County Longford (RPB 7113) 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 3 - Proven as to fact – YES

The Committee found the allegations to be proven as to fact by reason of the following:-

- Admission as to fact made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- 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 Teffia Park Pharmacy, Exhibit 3
- Oral evidence of Shane McGlynn given to the Committee on 17 October 2024.

Allegation 3 - Proven as to professional misconduct in that Gareth Johnston acted in a manner that is infamous or disgraceful in a professional respect- YES

The Committee found the allegations to be proven as to professional misconduct by reason of the following:-

- Admission as to professional misconduct made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O'Hourihane dated 18 October 2000.

Allegation 3 - Proven as to professional misconduct in that Gareth Johnston acted in breach of Principle 1 and 2 and 5 of the Code of Conduct for Pharmacists (2019 version) - YES

The Committee found the allegations to be proven as to professional misconduct by reason of the following:-

- Admission as to professional misconduct made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O'Hourihane dated 18 October 2000.
- Principle 1 and 2 and 5 of the Code of Conduct for Pharmacists (2019 version)

Allegation 3 - Proven as to Poor Professional Performance – YES

The Committee found the allegation of poor professional to be proven as to by reason of the following: -

- Admission as to poor professional performance made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O’Hourihane dated 18 October 2000.

Allegation 3 - Contravention of the Pharmacy Act 2007– YES

The Committee found the allegation of contravention of the Pharmacy Act 2007 to be proven by reason of the following: -

- Admission of contravention of the Act made on behalf of Gareth Johnston and set out in detail by Counsel for Mr Johnston;
- Undisputed expert evidence contained the Expert Report of Keith O’Hourihane dated 18 October 2000.
- 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 submitted that the Registrar’s view was that it was appropriate in all the circumstances that Mr Johnston be suspended for a period of 2 to 3 months and thereafter there would be a period of conditional registration to allow him to fully resume his previous role.

Ms Daly referred to the PSI Sanction Guidance document and stated that it is multi-purpose and is not solely concerned with the protection of the public but also concerns upholding professional standards and maintaining confidence in the profession. Ms Daly referred to a pharmacist being in a position of privilege and that members of public require confidence in

that position. Ms Daly referred to the requirement of trust in a pharmacist and the belief that a pharmacist has been regulated appropriately particularly where he does not adhere to regulatory framework. Ms Daly referred to the requirement for the sanction to be proportionate and for the Committee to consider the relevant conduct at issue.

Ms Daly referred to the findings on Allegation 1(a) in the Notice of Inquiry where the pharmacy was open in the absence of a pharmacist. She referred to this as a mandatory requirement with no derogation. She stated that it was not a short period of time, it was over the course of a morning and 54 items were sold to 22 individuals. Ms Daly referred to the evidence that the situation regarding the other pharmacist who could not attend the pharmacy on that day was known to Mr Johnston and he could have made other arrangements. Ms Daly referred to the matter as a serious one. Ms Daly also referred to the criminal conviction imposed on the Company but stated that the Committee must separately consider its regulatory function.

Ms Daly referred to the findings on Allegations 1(b), 2 and 3 which concerned the duty registers. Ms Daly referred to the detailed investigation and extensive efforts that had to be undertaken by PSI authorised officers in order to determine which pharmacist was working on what day. Ms Daly referred to the authorised officer's report, the contradictory accounts that emerged and the signature issues that arose. Ms Daly referred to the importance from a public safety perspective on knowing who is in charge of a pharmacy. Ms Daly stated that this was a systematic issue and it was not just one pharmacy involved on an isolated day.

Ms Daly referred to the PSI Sanction Guidance document and the requirement of proportionality and leniency but that leniency must be considered while ensuring public interest is protected. Ms Daly stated that the Committee must have regard to the mitigating/aggravating factors.

Ms Daly submitted that the Registrar's position was that a short period of suspension was necessary to mark the seriousness of the conduct and to show that such conduct is not acceptable. She referred to a period of conditional registration being necessary thereafter to assist Mr Johnston in returning to a safe practice, to illustrate the seriousness of the matters and to protect public safety.

Submissions on behalf of the Registrant

Mr Cahill submitted that the Registrant was consenting to censure together with a regime of audits across the five pharmacies and that he would undertake not to repeat the conduct complained of. Mr Cahill stated that the question of sanction is ultimately a matter for the Committee but that the sanction being outlined on behalf of the Registrar was disproportionate in severity in terms of the length and extent of the sanction. Mr Cahill referred to relevant aspects of the PSI Sanction Guidance document and stated that the sanction being proposed on behalf of the Registrant was to address various issues and in particular to ensure exemplary professional conduct through a regime of unannounced audits. Mr Cahill submitted that a suspension would be penal in the circumstances.

Mr Cahill referred to Allegation 1(a) and submitted that Mr Johnston fully accepted that he made a serious error and misjudgment in opening the pharmacy on the day in question but

he took steps thereafter to contact the customers. Mr Cahill accepted that any mitigation would be mild mitigation in light of the difficulty of obtaining locus pharmacists. He stated that Mr Johnston was very remorseful regarding the situation he put [REDACTED] in on that day. Mr Cahill stated that it was accepted that the maintenance of the duty register was shambolic in certain respects and that it was accepted that it is the responsibility of the Registrant to properly maintain records.

Mr Cahill asked the Committee to carefully consider the question of proportionality and leniency. He referred to the insight shown by Mr Johnston, the plea of guilty entered on behalf of the Company in the criminal proceedings. He referred to the serious consequence for Mr Johnston and the pharmacies if Mr Johnston was suspended and had conditional registration imposed. He referred to damage to his professional and personal reputation and the significant financial implications.

Advice of Legal Assessor 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.

Committee Recommendations on Sanction

- a. Mr Johnston is suspended for a period of 2 months.
- b. Mr Johnston will not act as supervising pharmacist of Johnston's Pharmacy Lanesboro (7022), or any other pharmacy, for a period of 2 months to commence after the period of suspension has been completed, and a new Supervising Pharmacist will be appointed for this period.
- c. Mr Johnston will not act as superintendent pharmacist of the Pharmacies in Johnston's Pharmacy Group (being Johnston's Pharmacy Lanesboro (7022), Johnston's Pharmacy Castlerea (7847), Johnston's Pharmacy Teffia Park (7113), Johnston's Pharmacy New Street (8248) and Johnston's Pharmacy Ballygar (6943) (the "Pharmacy Group")), or any other pharmacy, for a period of 2 months to commence after the period of suspension has been completed, and a new Superintendent Pharmacist will be appointed for this period.

- d. To engage an independent expert pharmacist, to be approved in advance by the Registrar of the PSI, to conduct 1 audit every 6 months over an 18 month period of each pharmacy within the Pharmacy Group, and the report of the audits to be provided to the Registrar within two months of the date of each audit, such audits to address, inter alia, pharmacist supervision in the Pharmacy Group, maintenance of the pharmacy Duty Registers in line with the PSI Guidance and the roles and responsibilities of the Superintendent Pharmacist.
- e. Mr Johnston will be responsible for the costs associated with compliance with these conditions.

Reasons for recommendation:

The Committee had regard to the very serious nature of the allegations which were admitted by the Registrant. 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 had regard to the obligations and responsibilities on Mr Johnston as supervising and superintendent pharmacist, issues of public protection and the clear position that the pharmacy should not have been opened on the day in question. The Committee were satisfied that none of the factual circumstances pertaining at the time including the unavailability of another pharmacist or that [REDACTED] was awaiting registration provided any justification for the decision to open the pharmacy. In considering sanction, the Committee also had regard to the findings concerning the failure to properly maintain the drug registers in three pharmacies.

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 also had particular regard to the position that the other staff members (one technician, an over-the-counter assistant and a pharmacy intern awaiting registration) were placed in on that day as a result of Mr Johnston's actions. The Committee considered the nature and extent of the deficiencies in the duty registers for the three relevant pharmacies which resulted in a lack of clarity about what pharmacist was on duty in the pharmacies on specific dates. The Committee has regard to the fact that Mr Johnston was the responsible person in charge and that there was a blatant disregard for some of his clear obligations and responsibilities as a supervising and superintendent pharmacist.

The Committee also had regard to a number of mitigating factors in the case. In particular, the Committee had regard to the admissions made by the Registrant, the insight shown, the acceptance that he made a serious error in opening the pharmacy without a registered pharmacist being present and the acceptance of the clear deficiencies in the maintenance of the duty registers. The Committee noted the steps taken to improve the relevant procedures in the pharmacies and the previous unblemished career enjoyed by Mr Johnston.

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 Mr Johnston in these regulatory proceedings. The Committee acknowledged that the imposition of a significant sanction may have a punitive effect on a registrant but considered that the fact of reputational damage personally and/or professional had little weight in considering the sanction to recommend.

The Committee considered the available sanctions. The Committee were of the view that censuring the Registrant would not be sufficient to address the seriousness of the findings in this case.


The Committee also considered attaching conditions to the Registrant's registration limited to an audit regime but were of the view that a censure together with this form of conditional registration would not be sufficient having regard to the very serious failings and would not adequately address issues of public protection.

The Committee decided that a period of suspension followed by a period of conditional registration was a proportionate sanction in the circumstances. The Committee was of the view that the proven misconduct and poor performance was so serious that suspension is necessary to maintain public confidence in the profession. The Committee was of the view that the Registrant conduct must be viewed as undermining confidence in the profession and a lesser sanction would not adequately protect the public interest and would fail to act as a sufficient deterrent for the Registrant or wider profession. 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 the Registrant could return to fully safe practice on a phased basis.

The Committee was of the view that a period of 2 months suspension and 2 months conditional registration was appropriate and proportionate in the circumstances. The Committee was of the view that an audit regime was also necessary and proportionate in the circumstances and in particular to protect the public and to ensure the identified failings are not ongoing and/or repeated.

The Committee acknowledged that the recommended sanction would have a significant and punitive effect on the Registrant. The Committee was cognisant of the obligation of the requirement to be as lenient as possible to the Registrant 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