

PHARMACEUTICAL SOCIETY OF NORTHERN IRELAND

HEARING

of the

STATUTORY COMMITTEE

held at

73 University Street, Belfast, BT7 1HL

on

16 January 2019, 8 March 2019 and 2 April 2019

Committee Members:

**Michael Wilson (Chair)
Frances-Ann Archibald (Registrant Member)
Paul Archer (Lay Member)**

Case of:

MICHAEL JOHN McDAID

Issue

In accordance with paragraph 37(7) of the Council of the Pharmaceutical Society of Northern Ireland Regulations (Fitness to Practice and Disqualification) Regulations (NI) 2012 ('the Fitness to Practice and Disqualification Regulations') these are the findings and reasons of the Statutory Committee ('the Committee') on the application of, Michael John McDaid - Registration Number 3302 ('the Applicant') made pursuant to paragraph 9 of Schedule 3 to the Pharmacy (NI) Order 1976 ('the 1976 Order') to be restored to the Register of the Pharmaceutical Society of Northern Ireland ('the Society').

Restoration Application

On 1 May 2018 the Applicant submitted a Restoration Application to the Registrar of the Society. On 31 August 2018 the Secretary to the Statutory Committee gave Notice to the Applicant that the Restoration Application had been received and that a Restoration Hearing would be held. The Hearing took place on 16 January 2019, 8 March 2019 and 2 April 2019. With the agreement of all parties and the Statutory Committee this application was jointly heard with the Restoration Application of Michael John McDaid.

Attendance of Applicant

The Applicant attended and confirmed his name. He was represented by Brian Fee QC instructed by O'Hare Solicitors. Counsel for the Society was Jonpaul Shields BL instructed by Cleaver Fulton Rankin, Solicitors.

Preliminary matters

Counsel for the Society accepted that the Restoration Application and the documents submitted with it complied with the requirements of regulation 9 of the Fitness to Practice and Disqualification Regulations.

Background to Restoration Application

1. The Applicant who was born on 18 May 1976, graduated with a degree of BSc Pharmacy from Queen's University Belfast in 1997 and was first registered with the Society on 15 July 1998.
2. The Applicant appeared before a Statutory Committee of the Society on 24 and 25 June 2009 and a direction was given on 1 July 2009 to remove his name from the Register on the grounds of misconduct pursuant to Article 20(1) of the 1976 Order.

3. The Statutory Committee also gave a further direction that an application for restoration would not be entertained until the expiration of a period of 7 years.
4. On 1 May 2018 the Applicant applied for restoration.
5. The Applicant has at all times since 1 July 2009 been and remained registered with the Pharmaceutical Society of Ireland.

2009 Statutory Committee Hearing

The Decision of the Statutory Committee in 2009 sets out the detailed background to the matter including the following.

As a result of routine monitoring the Central Service Agency ('CSA') identified miscoding of prescriptions at retail pharmacy premises operated by M&M McDaid Limited with consequent claims for over payment, which were paid by the CSA. At this time M&M McDaid Limited was operating two pharmacies, one in Lisnaskea and one in Rosslea, both County Fermanagh. The applicant was based in Lisnaskea and was the company's Superintendent Pharmacist. His brother, Martin Joseph McDaid, operated the Rosslea pharmacy. M&M McDaid Limited was a company owned and controlled by the applicant and his brother who were the only directors and shareholders of the company. As officers of the company they were responsible for the acts of the company.

The coding errors that were detected affected both pharmacies; in summary there was an over-preponderance of coding for proprietary medicines when in fact, generic medicines were dispensed. The product code dictated the cost of the product that would be paid by the CSA. In general terms generic medicines are cheaper than proprietary medicines and by coding generic medicines as proprietary medicines the CSA would overpay for each item that was incorrectly coded.

The CSA carried out an investigation and at a meeting on 1 November 2007 the applicant and his brother were informed that for prescriptions submitted between 1 January 2001 and 31 December 2006 the CSA had calculated, based upon an extrapolation of the information obtained, the pharmacies in Lisnaskea and Rosslea had been overpaid by approximately £34,000, and £47,000 respectively for those prescriptions.

The company agreed to repay £80,000 to the CSA. The company was also prosecuted, pleaded guilty and was convicted on 8 December 2008 on nine specimen charges of false accounting

contrary to section 17(1)(a) of the Theft Act (NI) 1969. It was fined £1,500 on each count (a total of £13,500).

As part of the Society's investigation prior to the Hearing in 2009, both the applicant and his brother were invited for interview, but both declined to do so on the basis of legal advice. It was accepted by the Statutory Committee that "*no criticism is to be made of the McDaid's in this respect*".

At the 2009 Hearing both the applicant and his brother accepted that their fitness to practise was impaired.

In evidence to the Statutory Committee in 2009 the applicant and his brother stated that the context in which the miscoding took place was the use of a computer programme which permitted the printing of a label for a medicine that was being dispensed, which bore both a proprietary name and a generic name and which would also have borne the code of the proprietary brand, which they said was to assist customers whose medication was being changed from a proprietary to a generic brand. The Statutory Committee noted that they failed to explain how on so many occasions the person doing the coding put the wrong code on the prescription being sent to the CSA for payment. It also noted:

the applicant and his brother accepted that:

- The correct codes should have been entered
- They gave no training as to how coding was to be done properly
- They carried out no checks on the coding carried out by others
- The miscoding gave rise to an approximate overpayment of £80,000
- The pleas of guilty entered by the company to the charges of false accounting, and thereby acting dishonestly, were made with their authority.

They also stated that they now had in place a system of checking that correct codes were entered on prescriptions.

At the outset of the hearing in 2009 the Statutory Committee acceded to a consensual request by the parties to amend paragraphs 3, 4 and 5 of the Notice of Hearing. The effect of this is as follows:

3. *That the company of which you are a director, ~~deliberately and dishonestly~~ submitted for payment prescription forms that were incorrectly coded so that a substantial loss was*

occasioned by the Central Services Agency and a corresponding gain was made by the company. This ~~deliberate and dishonest~~ conduct continued for the period of time from January 2001 to December 2006.

- 4. That as a director of the said company, and as a registered pharmacist, you ~~knew or~~ ought to have known that the company engaged in unlawful accounting practices as an intrinsic part of its business activity.*
- 5. That you were, or allowed yourself to be, associated with the running of the company that was ~~clearly~~ engaged in unlawful accounting practices as an intrinsic part of its business activity.*

2009 Decision

The Statutory Committee noted as aggravating factors:

- The matters giving rise to complaint were incidents of dishonesty
- The course of conduct continued over a period of six years and at two pharmacy premises
- The amount of money involved was £80,000
- Such monies would otherwise have been available for use within the Health Service.

In mitigation the Statutory Committee noted:

- The monies misappropriated had been repaid
- Neither the applicant nor his brother, nor the company, had any previous convictions for misconduct
- There was no criticism of fact that the applicant and his brother for failing to attend for interview as this was on the basis of legal advice
- There was no danger to the health or welfare of any patient
- The applicant and his brother has met with the Health Board and agreed repayment
- They had put in place safeguards to prevent any recurrence
- The personal and family circumstances of the applicant and his brother.

The Statutory Committee concluded that it was impossible to assess the extent of their knowledge of the miscoding, and it was not possible to say whether the prescriptions would have been coded (or amended) personally by either of them. However, the Statutory Committee determined that the pleas of guilty, by the company, to the charges of false accounting, constituted "*strong evidence of dishonesty*" and commented that "*... both ...have been closely associated with the dishonesty established*".

The Statutory Committee also noted a number of points taken from an agreed Statement of Facts:

- They ought to have known that the company engaged in unlawful accounting practices as an intrinsic part of its business activity
- They were associated with a company that was engaged in unlawful accounting practices
- They took no or no adequate steps to ensure that the company was operating lawfully
- They took no or no adequate steps to ensure that the company was not engaged in financial irregularity and illegality as part of its core business activity
- They failed to operate any, or any adequate, supervision and control over the affairs of the company to ensure that the business was operating lawfully and not engaged in the practices previously specified.

The Statutory Committee concluded that the applicant and his brother were guilty of misconduct which rendered them unfit to be on the Register of Pharmacists and directed that their names be struck from the Register. It also directed that, because of his role as Superintendent Pharmacist, an application for restoration from the applicant should not be entertained until the expiration of seven years - the equivalent period for his brother was five years.

The Statutory Committee considered that the sanctions were appropriate and proportionate having particular regard to:

1. The amount of money involved
2. The period of time over which miscoding occurred
3. The complete lack of training of persons doing the work
4. The complete lack of checking of coding
5. The fact that the company had pleaded guilty to nine counts of false accounting, all of which were sample charges
6. That false accounting necessarily involved dishonesty
7. That both individuals had at all times been closely associated with the running of the business of the company and therefore necessarily with the dishonesty admitted by the company
8. That, as accepted by both individuals through their Counsel, they:
 - (1) ought to have known that the company engaged in unlawful accounting practices such as part of its business activity;
 - (2) were associated with the running of a company that was engaged in unlawful accounting practices;
 - (3) took no or no adequate steps to ensure that the company was operating lawfully;

- (4) took no or no adequate steps to ensure that the company was not engaged in financial irregularity and illegality as part of its business activity;
- (5) failed to operate any or any adequate supervision or control over the affairs of the company to ensure that the business was operating lawfully and not engaged in the practices previously specified that they had thereby brought the profession into disrepute;
- (6) that they had also by reason of the foregoing failed to comply with a number of principles of the Society's Code of Ethics and Practice (principles 1, 2 and 3).

Although the Statutory Committee was invited by Counsel for the Society to exercise a statutory power under the Medicines Act 1968 to disqualify the company and/or remove its premises from the Register on the basis that a member of its board had been found guilty of such misconduct which would in the opinion of the Statutory Committee render them unfit to be on the Register of Pharmacists, the Statutory Committee commented that (whilst the matter had not been argued before it) the Society might have had difficulty in satisfying it that the misconduct was "*continuing*" as required under the relevant provision of the 1968 Act.

In any event the Statutory Committee concluded that it would not have chosen to exercise those powers even if they were available to it on the grounds that:

- Although the company was a separate legal personality it was in many respects synonymous with the applicant and his brother;
- The applicant and his brother had already been dealt with as individuals;
- There were employees in both pharmacies whose jobs and livelihoods would be placed at risk;
- The Statutory Committee had received many references that were favourable to the applicant and his brother, and the pharmacy business, indicating good standing in the community;
- To do so would possibly cause disruption of the supply of pharmaceutical services in the local communities.

2019 Hearing

Oral Evidence

Joseph Brogan

Joseph Brogan gave evidence in addition to his written statement. He is Head of Pharmacy and Medicines Management at the Health and Social Care Board and is by profession a pharmacist. Mr Brogan confirmed that no action was taken in the Republic of Ireland against the Applicant in relation to the misconduct that was the subject of the Statutory Committee hearing in 2009. He also gave evidence that in 2009 the Board had considered if M&M McDaid Limited, as the registered provider of pharmacy services, should be removed from the pharmaceutical list but did not do so; one of the reasons being that there were no ongoing probity issues in 2009. He added that, since 2009, there had been minor issues but that these were within the normal range of practice and confirmed that there was nothing of concern, and that the company was only subject to normal monitoring in relation to the correctness and accuracy of claims being made.

In cross-examination Mr Brogan accepted that, apart from a reservation that Standard Operating Procedures ('SOPs') did not appear to be signed and dated (and therefore evidence that persons working in the business had actually been trained on those procedures) there did seem to be a reasonably robust system of making sure that the kind of miscoding that had taken place would not recur.

He also acknowledged the Applicant's '*demonstrable*' remorse contained in his written statement but deferred to this Committee on the wider issues of the Applicant's insight and remediation.

In response to a question from the Chair he stated that he had no concerns in terms of patient complaints and that the pharmacy business was providing reasonable provision in Lisnaskea and Rosslea.

The Applicant

The Applicant gave evidence of his family background, education and training. He stated that he married in 2003, had three children and lived in County Fermanagh between Lisnaskea and Newtownbutler. He said that his wife was a nurse who worked in the Health Centre in Lisnaskea, and that he was also, since 2013, the treasurer of a football club in Newtownbutler.

After qualifying in 1997 and working as a locum in England for a short period, he returned to Northern Ireland. Subsequently the pharmacy in Lisnaskea was opened in 1999 and the one in Rosslea in 2001. Another pharmacy was opened in Kilnaleck in County Cavan in 2000. These businesses were operated by him and his brother (Martin McDaid). He acknowledged that they were inexperienced in running a business and that he did not take much time to reflect on some of the proper things that they should have been doing.

He said that the contact from CSA in 2006 came out of the blue but that, based on the extrapolation exercise carried out by the CSA, he agreed the liability to repay £80,000 and started the repayments straight away.

The Applicant accepted that the decision that the company should plead guilty to the criminal charges was taken by him and his brother; that ultimately they were responsible for the wrongdoing, and that the Statutory Committee was justified in the sanctions that it had imposed.

The Applicant said that whilst patients were very supportive, the company's conviction and his own striking off were widely known both professionally and publically and had a devastating effect on him and his family.

The Applicant set out that SOPs had been introduced in 2006, and that these were updated as required and reviewed every two years. He added that that staff are made aware of the content of the SOPs. He stated that the copies provided to Mr Brogan were file copies from the company's office, but confirmed that the shop copies were signed and dated by staff.

The Applicant confirmed that the company currently employed a superintendent Pharmacist, Daniel O'Keefe, and other staff in the Lisnaskea and Rosslea shops and said that staff turnover was low.

The Applicant also confirmed that he (and his brother) had continued to practise as registered pharmacists in the Republic of Ireland since 2009 and that he had met his Continued Professional Development requirements and referenced certificates furnished for the purpose of this hearing to evidence this. He acknowledged that he was, however, unable to attend any CPD or training organised by the Society in Northern Ireland.

The Applicant explained in detail the coding systems and checks that are now in place in the Northern Irish pharmacies and stated that no further issues had arisen.

In cross-examination the Applicant was questioned at some length on the circumstances which had led to the company's conviction for dishonesty based upon the falsification of documents for accounting purposes, and his understanding of his responsibility for that. He was asked if there was any equivocation on his part or regret that he had authorised the company to enter guilty pleas. He denied this but stated that there had been no 'intended dishonesty'. In re-examination by his own Counsel he accepted the basis on which dishonesty was clarified, explained and accepted by the Statutory Committee in 2009. He said that he had not made any enquiries about any programmes that might be available in the Republic of Ireland on honesty or integrity.

In cross-examination the Applicant also confirmed that the company now had an in-house accountant. It was also his intention, if restored, to keep Daniel O'Keefe in place as the Superintendent Pharmacist, and that he personally would wish to work in Northern Ireland 'the odd day' as he already worked full time in the South. The Applicant stated that did not think there would be a public concern if he was to come back to the local area.

In response to questions from the panel the Applicant stated that there were six pharmacy outlets in the Republic of Ireland and two in Northern Ireland, employing some fifty staff and that all of these were operated through companies of which he and his brother were directors. He confirmed that the name above the door in the Lisnaskea and Rosslea pharmacies had always been 'McDaid's'.

Martin Joseph McDaid

Martin McDaid gave evidence of his family background, education and training. Like the Applicant he had grown up in Newtownbutler, and still had strong personal and family connections in that area. He lives in Belturbet, County Cavan.

After qualifying in 1992 and working in Belfast and subsequently in England he returned to Northern Ireland in late 2000. He registered in the Republic of Ireland in 2000, and began working in one of their Southern Irish company's pharmacy premises in Kilnaleck, County Cavan. He worked there four days a week and worked for two days in Rosslea after it opened in 2001. Between 2001 and 2006 he said that he had limited knowledge of running a business.

At present he said that he worked three to four days in Kilnaleck and one or two mornings in the company's administrative offices at Lisnaskea.

Martin McDaid stated that he unequivocally accepted the findings of the 2009 Statutory Committee, which '*the cat and the dog who crossed the street knew [about]*', and he said it had had a terrible effect on him, his family and his parents.

To ensure that there would be no reoccurrence he explained that SOPs were introduced and detailed the current processes for coding which had given rise to no issues since 2006. He expressed remorse for what had happened.

In cross-examination when asked to express in his own words what he thought he had done wrong he replied that he had acted in a dishonest way; that he was personally responsible for the deeds and acts of the company, and that he was reckless in not having SOPs or a system of checks in place, which he said was very laissez faire or perhaps chaotic.

He outlined his practice in the South of Ireland and expressed his desire to practise every day to be better as a pharmacist. He said that he undertook courses not because he had to do them but because he wanted to. He also wrote a health blog for a local newspaper.

He stated that if restored to the register he would not intend to change the current business arrangements, but would work, for example, as a sick day locum.

In answer to questions from the panel, Martin McDaid, clarified the working of the computerised coding system and how updates on new products and prices are downloaded on a system that is in common use within the pharmacy business in Northern Ireland. He also confirmed that, if restored, he would not intend to seek a position as a Superintendent Pharmacist.

Daniel O'Keefe

Daniel O'Keefe gave evidence that he was born in Newtownbutler, County Fermanagh, where he still lived. He graduated with a Masters in Pharmacy in 2006 and immediately began working for McDaid's in Lisnaskea, where the Applicant was his tutor. From 2006 to 2009 he worked as a locum pharmacist, from 2009 to 2015 he was the Supervising Pharmacist in Lisnaskea, and since 2015 he has been the Superintendent Pharmacist for both Lisnaskea and Rosslea. He is dual registered in Northern Ireland and the Republic of Ireland

Mr O'Keefe said that he was aware of the events that had led to the Applicant and his brother being struck off in 2009. He had spoken with both of them, and in particular the Applicant who

was his pre-registration tutor. He said it had a profound effect on both, with shame and embarrassment in a very small local community.

Mr O'Keefe said that a lot was done to ensure that the mistakes would not recur. He explained in detail the computerised coding process, and how this is now updated automatically, and the process of checking that now takes place for both pharmacies. He confirmed that SOPs are signed and dated by anyone to whom they apply and how they are reviewed.

In cross-examination Mr O'Keefe stated that it had been explained to him that what had happened, which was unfolding as he was starting his career, arose from coding errors for which the McDaid's had held their hands up. He confirmed that the word 'dishonesty' had never been used to describe what had happened.

Mr O'Keefe was asked about the fact that, in reality, the McDaid's were his employers. He replied that he had not lightly taken on the role of Superintendent, and that before he did so he made it very clear that he would not tolerate any interference in his role as Superintendent. If he wanted their guidance or their advice he would go to them, but would not tolerate being told how to do his job as a Superintendent Pharmacist. He also stated that he had no intention of leaving the role as Superintendent Pharmacist even if they were restored to the Register. He acknowledged that, as Superintendent, *'the buck stops with him'* and that he had had a conversation with the Applicant to that effect.

Mr O'Keefe was asked about his statement that the Applicant and his brother both remained conversant with issues of dispensing in Northern Ireland and the Republic of Ireland. He said that because of their ownership of the businesses at Lisnaskea and Rosslea they would be aware of dispensing issues and changes. He added that he spoke with them on a daily basis about running the business as they needed to know about changes to pricing or drugs not being available.

Asked how he could say in his statement that from the time they were struck off both has shown regret and remorse, he said that the first thing to do if you have done something wrong is to hold your hands up and admit it and then do everything in your power to make sure it does not happen again. He added that they had implemented procedures to make sure that to the best of everybody's human ability it could not happen again, with SOPs and with the extra checks that are involved with coding and with preparing prescriptions for submission to the Business Services Organisation.

In answer to questions from the panel, Mr O'Keefe stated that there were approximately 45 SOPs in operation covering a range of matters.

Law

Removal from the Register is the most serious sanction available to a Statutory Committee. Once removed a former registered person is considered no longer fit to be a member of the profession. The onus of satisfying the Statutory Committee that restoration is appropriate rests with the Applicant. In effect, the Applicant must satisfy the Statutory Committee that there is no current impairment.

In considering this restoration application, the Statutory Committee must be mindful of the purpose of the original sanction (also referred to as the over-arching regulatory objectives – see paragraph 4, of the Fitness to Practise and Disqualification Regulations):

- The protection of the public
- Maintenance of public confidence in the profession; and
- The maintenance of proper standards of behaviour

We have given careful consideration to the circumstances of this case which arise from the direction given on 1 July 2009 to remove the name of the Applicant from the Register on the grounds of misconduct. The parties agree that the misconduct amounted to dishonesty.

In considering misconduct which, as in this case, has associated dishonesty, we are mindful of the well established principles set out in Bolton -v- Law Society [1994] 1 WLR 512 to which both Counsel have referred in their helpful written submissions. Although that case concerned a solicitor, there is now no doubt that the same principles apply to pharmacists (see GMC -v- Chandra [2018] EWHC Civ 1898). Whilst it is clear that dishonesty is not an absolute bar to restoration, that bar is a high one and the maintenance of the reputation of the profession, and sustaining public confidence in the integrity of the profession may well outweigh the fortunes of any individual member.

In our assessment of the Applicant's current fitness to practise, we are entitled to take into account that he was prohibited from making a restoration application for a minimum period of

seven years - in fact his application was made almost nine years after the date of his striking off. However, we must of course keep in mind the over-arching objectives.

Our consideration of misconduct involves consideration of past misconduct and any steps taken subsequently by the practitioner to remedy it (see Cox J's comments in CHRE -v- NMC and Grant (2001) EWHC 927).

We must also take account of the Applicant's insight into the source of his misconduct, any remedial steps that have been taken and the risk of recurrence of the misconduct (see Sales J in Yeong -v- GMC (2009) EWHC 1923).

Furthermore we must have regard to the wider public interest or, put another way, ask ourselves if the Applicant presents a risk to the members of the public (which we are satisfied does not arise in the present case), or whether the need to uphold proper professional standards and public confidence in the profession would be undermined if the restoration application was granted.

Although the passage of time is relevant we must still consider whether, in a case of admitted dishonesty, to grant the restoration application might be viewed as suggesting that conduct as that which arose in this case might be engaged in with impunity.

Conclusion

The misconduct which gave rise to the original proceedings was rooted in dishonesty. We cannot disagree with how Counsel for the Society has summarised this:

- It occurred over a protracted period of time - six years;
- There was a substantial loss to the CSA (£80,000) and a corresponding gain to the company;
- It occurred across two separate pharmacies controlled and operated by the Applicant and his brother as directors of the company;
- It was associated with the provision of pharmaceutical services.

What is the evidence of remediation? Whilst dishonesty is inherently difficult to remediate we are satisfied on the evidence before us, including in particular:

- the steps taken to put in place and maintain a computerised system of coding to prevent recurrence of the coding errors which underlay the dishonesty;

- the fact that for over twelve years (i.e. since 2006) there has been no recurrence of such errors;
- that, since 2009, there have been no other matters either in Northern Ireland or the Republic of Ireland (where the Applicant has continued to practise) which have given rise to any adverse finding against the Applicant;
- the role of Daniel O'Keefe as the Superintendent Pharmacist;
- the understanding of Daniel O'Keefe of his duties and personal responsibility as Superintendent Pharmacist notwithstanding that he is an employee of the company of which the Applicant and his brother remain the directors;
- the evidence of Joseph Brogan who said that since 2009, there had been minor issues affecting the Applicant's business but that these were within the normal range of practice and his confirmation that there was nothing of concern, and that the company was only subject to normal monitoring in relation to the correctness and accuracy of claims being made;

that there is no risk of repetition.

We are also satisfied from his evidence, and from the various positive and informed references submitted on his behalf, that the Applicant has shown genuine remorse for his misconduct. In addition, we note that in his evidence Joseph Brogan referred to the 'demonstrable remorse' exhibited in the statement of the Applicant that he had seen.

We have also considered the degree of insight shown by the Applicant into the gravity of the original misconduct. In his cross-examination the Applicant was pressed on whether or not there was any equivocation on his part or regret that he had authorised the company to enter guilty pleas. He denied this but stated that there had been no '*intended dishonesty*'. In re-examination by his own Counsel he accepted the basis on which dishonesty was clarified explained and accepted by the Statutory Committee in 2009. On balance, and having heard and seen the Applicant give evidence, we are satisfied that the Applicant has demonstrated a sufficient understanding and acceptance that the original misconduct was a manifestation of his personal dishonesty. We are also persuaded of this in circumstances where, before the 2009 hearing the terms of the Notice of Hearing were amended, for example, to remove the words 'deliberately and dishonestly' (at paragraph 3) as descriptive of his actions as a director. Although the Applicant in his evidence seemed confused by the corporate actions of a company as expressed through its directors, and his own personal responsibility, we are satisfied that he accepted and understood the basis on which the 2009 Statutory Committee had found his actions to be dishonest.

Given that for almost ten years the Applicant has not been on the Register, we are obliged to consider his current levels of knowledge and skills and developments in practice. Throughout this period however, the Applicant has remained registered in the Republic of Ireland, and at the same time has operated the pharmacies in Lisnaskea and Rosslea (and in addition several outlets in the Republic of Ireland) as a director through a corporate ownership structure. Whilst the requirements for practice in the Republic of Ireland are not identical, and his CPD participation there is not recognised by the Society, it would seem strange if we were unable to conclude that his ongoing practice as a registered pharmacist in the Republic of Ireland, allied to his business interests in County Fermanagh, would indicate a reasonable level of competence in terms of knowledge and skill, and developments in practice in this jurisdiction.

Notwithstanding, our conclusions on remediation, remorse, insight and skill, we must still come back to the over-arching objectives, and ask ourselves if the restoration of the Applicant to the Register would damage public confidence in the profession and or the maintenance of proper standards.

In answering this question we have looked at events since 2009. The Applicant has continued to work as a registered pharmacist in the Republic of Ireland and as a director and owner of pharmacy businesses in counties Cavan, Monaghan, Longford and Westmeath, as well as County Fermanagh. Although these are neighbouring counties in separate jurisdictions, they are nonetheless in many respects a single or identifiable social and economic area. Whilst the concept of the public interest cannot be confined to, or defined by, what, for example, the public in Fermanagh and Cavan think of the Applicant, it is evident that, despite the public's knowledge of the criminal and dishonest conduct which took place, the public has continued to support the Applicant's businesses.

The events giving rise to the original sanction and this application took place a considerable time ago. The public purse was reimbursed, the company was prosecuted and convicted, and the applicant and his brother were struck off in 2009. We have concluded that there is no risk of repetition. The Applicant has shown adequate remorse and sufficient insight and has a reasonable level of professional competency. In addition, the Society took no issue that in his application the Applicant had met the requirements under Regulation 9 of the Fitness to Practice and Disqualification Regulations. Furthermore, whilst the Applicant could have reapplied in 2016, he has delayed doing so until now.

Taking all of this into account it is our opinion that confidence in the profession would not be damaged if the applicant was restored to the Register and that to do so would not be inimical to the maintenance of standards in the profession. This is subject to our decision that the restoration of the Applicant's name to the Register should be conditional. Any condition that we impose must be specific, appropriate, workable and enforceable and will be imposed to protect the public interest and to reinforce the message that standards in the profession must be maintained at all times.

Accordingly, restoration will be conditional on the following which we also consider is proportionate and the minimum necessary.

For a period of three years from 2 April 2019 the Applicant:

- shall not act as a Superintendent Pharmacist;
- shall notify the Society should Daniel O'Keefe cease to act as the Superintendent Pharmacist of M&M McDaid Limited, or cease to be employed by that company;
- shall notify the Society of the name, address, and registration number of any other person who is appointed to act as Superintendent Pharmacist of M&M McDaid Limited;

Costs

The Society made application for an order for costs and expenses against the Applicant. A Schedule of costs and expenses had been served on the Applicant in accordance with the provisions of Regulation 48(1) of the Fitness to Practice and Disqualification Regulations. Having heard the representations of the parties the Statutory Committee orders that the Applicant should pay costs and expenses. The parties agreed that the Chair of the Statutory Committee should summarily assess these costs and expenses as provided for in Regulation 48(4) of the Fitness to Practice and Disqualification Regulations.

Having considered the matter it is ordered that the Applicant should pay costs and expenses totalling £13,500 (plus any VAT as appropriate) and that payment should be made on or before 30 September 2019.

Dated 2 April 2019

Signed 

Michael Wilson

Chair of the Statutory Committee

