STATUTORY COMMITTEE OF THE PHARMACEUTICAL SOCIETY OF NORTHERN IRELAND

In the matter of:	Michael John McDaid (3302)
Location:	The offices of the Pharmaceutical Society NI, 73 University Street, Belfast, BT7 1HL. This hearing was held in person under Covid 19 procedures.
Date:	27th May 2022
Committee:	Mr Gary Potter (Chair), Mr Derek Wilson (Lay), Mrs Liz Kerr (Registrant)
Persons Present and Capacity:	Mr Michael John McDaid (Registrant), Mr Brian Fee QC, instructed by Mr Brendan Guinness, O'Hare Solicitors (the Registrant's Legal Representatives), Mr JonPaul Shields, Barrister, instructed by Shannon McClintock, CFR Solicitors (PSNI's Legal Representatives)

Service

1. The Committee satisfied itself that service of the Notice of Hearing was properly effected. The Notice of Hearing, dated 20th April 2022, was sent to the Registrant's registered address on the same date. This was more than the 35 days' notice required to be given under regulation 18 of The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (NI) 2012 ('the Regulations').

2. The Committee heard allegations of misconduct in respect of Mr Michael John McDaid, a registered pharmacist (the Registrant). The Registrant was in attendance and was represented by Mr Brian Fee QC. The Pharmaceutical Society of Northern Ireland (the Society) was represented by Mr Jonpaul Shields, Barrister.

3. The Committee had a hearing bundle numbering page 1 to page 67. In the course of the hearing, the Committee admitted in evidence the following documents:

- Exhibit 1: Statement of Case by the Pharmaceutical Society NI, dated 23rd May 2022.
- Exhibit 2: Background to previous disciplinary matter, received 27th May 2022
- Exhibit 3: Supplementary McDaid Bundle, submitted by the Society, received 27th May 2022.
- Exhibit 4: Supplementary McDaid Bundle, submitted by the Registrant, received 27th May 2022.
- Exhibit 5: Character reference, Maple Healthcare, dated 26th May 2022.
- Exhibit 6: Fitness to Practise Statement of Case by the Pharmaceutical Society NI, received 27th May 2022.

PRELIMINARY LEGAL ARGUMENTS

4. The Committee received no preliminary legal arguments.

ALLEGATIONS

5. The Registrant faced the following allegations:

1. *On 3 March 2021, you attended Musgrave Police Station and accepted a police caution in relation to the following offence - that between 2nd and 24th day of March 2020 you sold or supplied a Prescription Only Medicine (POM), namely Ranitidine, otherwise than in accordance with a prescription given by an appropriate practitioner, in contravention of Regulation 214(1) of the Human Medicines Regulations 2012, contrary to Regulation 255(1)(a) of the Human Medicines Regulations 2012.*

For the purposes of paragraph 1(3) of Schedule 3 to the Pharmacy (Northern Ireland) Order 1976 as amended and Regulation 26(11) of the Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012, the following principles and obligations (contained in the Pharmaceutical Society of Northern Ireland's Code of Professional Standards of Conduct, Ethics and Performance for Pharmacists in Northern Ireland (2016)) are regarded by the Pharmaceutical Society of Northern Ireland as relevant to the proceedings. Further, the Pharmaceutical Society of Northern Ireland alleges that you are in breach of these principles and associated standards by reason of the police caution particularised above.

- *The general principle of registration as a pharmacist that requires you to act to promote and maintain public confidence in the pharmacy profession.*

- *Principle 2 – Provide a safe and quality service and, in particular, standard 2.1 and the associated obligations set out below.*

    - *Standard 2.1 – Provide safe, effective and quality care.*

        - *Standard 2.1.1 – Promote and ensure the safe, effective and rational use of medicines, medicinal products and therapies.*

- *Standard 2.1.2 – Effectively control and manage the sale or supply of medicinal and related products paying particular attention to those with a potential for abuse or dependency.*

- *Principle 3 – Act with professionalism and integrity at all times and, in particular, standard 3.1 and the associated obligations set out below.*

  - *Standard 3.1 – Act with honesty and integrity at all times.*

    - *Standard 3.1.1 – Adhere to accepted and acceptable standards of personal and professional conduct at all times both inside and outside the work environment.*

    - *Standard 3.1.2 – Maintain public trust and confidence in your profession by acting with honesty and integrity in your dealings with others. This applies to your professional, business and educational activities.*

By your acts or omissions, it is alleged that you have (a) brought the profession into disrepute, (b) failed, on a professional basis, to observe the principles and obligations set out above and (c) undermined public confidence in the profession.

FACTS

6. The Pharmaceutical Society of Northern Ireland ("the Society") and the Registrant made submissions that the facts of the case, as laid out in paragraphs 1 to 14 in Exhibit 1, Statement of Case of the Pharmaceutical Society NI, were accepted and agreed by the parties. Paragraphs 1 to 14 of the statement of case being as follows:

   1. The Registrant is currently a registered pharmacist in Northern Ireland. He is currently the Secretary and a 'person with significant control' of M&M McDaid Limited which owns McDaid's Chemist, 179 Main Street, Lisnaskea.

2. *On 22 March 2021, a referral was received from Mr Peter Moore, Senior Medicines Enforcement Officer of the Medicines Regulatory Group ('MRG'), Department of Health, informing the Registrar that Mr Michael John McDaid had accepted a police caution on 3 March 2021. This was in relation to the sale or supply of a Prescription Only Medicine (POM), namely Ranitidine, otherwise than in accordance with a prescription given by an appropriate practitioner between 2nd and 24th March 2020, in contravention of Regulation 214(1) of the Human Medicines Regulations 2012, contrary to Regulation 255(1)(a) of the Human Medicines Regulations 2012.*

3. *The supply was first reported to an HSCB Pharmacy Advisor in mid-March 2020 by a GP Partner at Maple Healthcare, Lisnaskea who outlined details of an alleged unlawful supply of Ranitidine from McDaids Pharmacy, 179 Main Street, Lisnaskea.*

4. *The matter was referred to the MRG who examined the circumstances whereby Mr McDaid supplied a friend, Mr Stephen Swift, a Prescription only Medication (POM) from his place of work at McDaids Pharmacy, Lisnaskea. The supply was of 100ml of Ranitidine 75mg/5ml Suspension on two separate occasions between 2nd March 2020 and 24th March 2020. Mr Stephen Swift obtained these items for administering to his infant son Conleth Swift, DOB 02.01.2020. No prescription was available at the time of supply and no prescription has subsequently become available.*

5. *Ranitidine 75mg/5ml Suspension is an oral solution. For children, this medicine can be used to treat problems caused by acid in the oesophagus or too much acid in the stomach causing reflux. This can cause pain or discomfort known as indigestion or heartburn. Licensed Ranitidine medicines have been subject to a number of drug alerts and medicine recalls throughout 2019 and 2020 due to potential contamination with a genotoxic and carcinogenic impurity, N-nitrosodimethylamine (NDMA). The Chief Medical Officer and Chief Pharmaceutical Officer issued joint advisory letters, which were circulated to all community pharmacies, in November*

and December 2019 stating that treatment with Ranitidine should not be initiated in new patients.

6. *As part of the investigation, Mr McDaid attended at Castle Buildings Stormont Estate, Belfast on 7 October 2020 as a PACE 10 voluntary attendee, accompanied by his solicitor. He was interviewed under caution by Mr Peter Moore, Senior Medicines Enforcement Officer and Mr Canice Ward, Head of Medicines Regulatory Group. His interview was digitally recorded. A transcript of the interview is available. During interview, Michael McDaid read a pre-prepared statement during which he made a full admission to the allegations.*

7. *A file was submitted to the Public Prosecution Service ('PPS') on 26 November 2020 and directions were issued on 12 January 2021 to formally caution Mr McDaid that between 2nd and 24th day of March 2020 he sold or supplied a Prescription Only Medicine (POM), namely Ranitidine, otherwise than in accordance with a prescription given by an appropriate practitioner, in contravention of Regulation 214(1) of the Human Medicines Regulations 2012, contrary to Regulation 255(1)(a) of the Human Medicines Regulations 2012. Mr McDaid attended Musgrave Police Station on 3 March 2021 where he accepted the caution, which was then administered on behalf of the Department.*

8. *The Registrant made two supplies of Ranitidine without a prescription being available. Neither supply was made as an emergency supply and should therefore not have been made absent a prescription.*

9. *The medicine unlawfully supplied should not, in any event, have been considered appropriate for supply, given the joint advisory letters issued by the Chief Medical Officer and Chief Pharmaceutical Officer, which were circulated to all community pharmacies in November and December 2019.*

10. *The Registrant did not make direct contact with the GP prior to dispensing on either occasion.*

11. *Further, the day after the first supply of Ranitidine, the Registrant was informed by the Surgery that the GP was not happy to prescribe the medication due to its cost. The Registrant, nevertheless, proceeded to make a second supply of the medication in circumstances where he would not have had any expectation of receiving a prescription.*

12. *The medicine was unlawfully supplied to a vulnerable patient, a child, without the GP's consent, supervision or knowledge.*

13. *The Registrant allowed a personal relationship to override his professional judgement and responsibility.*

14. *By accepting the caution, the Registrant has admitted and accepted that his actions constituted a criminal offence.*

DECISION ON FACTS

7. As the Registrant accepted the facts as set out in paragraph 6, the Committee found the facts proved by reason of that admission under Regulation 34(6) of the Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012, (the Regulations).

8. Accordingly, the Committee found the allegations proved.

9. The Committee then moved to consider the issue of impairment of Fitness to Practise. The Committee received a Fitness to Practise Statement of Case, by the Pharmaceutical Society NI, Exhibit 6, and oral submissions on behalf of the Society from Mr Shields. The Committee did not receive any written or oral submissions from Mr Fee QC on the question of impairment, over and above the fact that Mr McDaid accepted that the facts amounted to misconduct and his Fitness to Practise was currently impaired.

10. The Committee received submissions (Exhibit 2 and Exhibit 3) which outlined that that the Registrant had been subject to a previous disciplinary matter in front of the Statutory Committee. The Committee noted that the allegations related to dishonest conduct with the activity covering a period between 1st January 2001 and 31st December 2006. The previous Committee established the relevant facts, which were largely agreed in any event, and found that the fitness to practise of the Registrant was impaired. Having considered the issue of sanction, the Committee gave a direction on 1st July 2009 that the Registrant should be removed from the Register for a minimum period of 7 years. The Registrant applied to be restored to the register, and this application was granted by a Statutory Committee on 2nd April 2019 with conditions, relating to acting as superintendent, for a period of 3 years.

DECISION ON IMPAIRMENT OF FITNESS TO PRACTISE

11. In this case misconduct and impairment of Fitness to Practise has been admitted by the Registrant, through his Counsel.

12. Nevertheless, the Committee has to consider independently the questions of misconduct and impairment of fitness to practise.

13. There is agreement as to the relevant legal position.

14. The test to be applied is a current, forward looking one. Borrowing the language used by Cox J at paragraph 69 of CHRE -v- NMC and Grant (2011) EWHC 927, the question that the Committee has to ask itself and determine is as follows:

> "*Is this Registrant's current fitness to practise impaired?"*

15. At paragraph 70, Cox J said:

> *"An assessment of current fitness to practise will nevertheless involve consideration of past misconduct and of any steps taken subsequently by the practitioner to remedy it."*

16. Sir Anthony Clarke MR said in Meadow v General Medical Council (2006) EWCA Civ 1390:

> *"In short, the purpose of [fitness to practise] proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FPP thus looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past".*

17. At Paragraph 65 of Cohen -v- GMC (2008) EWHC 581, Silber J stated the following in relation to a doctor's FTP:

> *"It must be highly relevant in determining if a doctor's fitness to practise is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated."*

18. At Paragraph 21 of Yeong -v- GMC (2009) EWHC 1923, Sales J stated

> *"It is a corollary of the test to be applied and of the principle that a FTPP is required to look forward rather than backward that a finding of misconduct in the past does not necessarily mean that there is impairment of fitness to practise - a point emphasised in Cohen v General Medical Council [2008] EWHC 581 (Admin) at 63-64 (Silber J), and Zygmunt, at 31. In looking forward, the FTPP is required to take account of such matters as the insight of the practitioner into the source of his misconduct, any remedial steps which have been taken and the risk of recurrence of such misconduct. It is required to have regard to evidence about these matters which has arisen since the alleged misconduct occurred: see Cohen, at 69 to 71, and Azzam v General Medical Council [2008] EWHC 2711 (Admin) at 44, 105 BMLR 142 (McCombe J)."*

19. The Committee agree that the acceptance of a Caution means that there is an acceptance by the Registrant that he committed a criminal offence.

20. The Registrant has a relevant disciplinary history and Committee is entitled to take that into account when assessing current impairment. When considering (i) whether the conduct of the Registrant that brought about the commission of the criminal offence is

remediable, and (ii) whether there is a risk of recurrence, the Committee is entitled to have due regard to the previous disciplinary history.

21. The Committee was referred to Mirtorabi -v- NMC (2017) EWHC 476 (Admin) where Mrs Justice Lang, at paragraph 26, stated -

"In my judgment, the CCC was entitled to take the previous disciplinary decisions into account in the way in which they did when assessing the extent of the Appellant's impairment and the appropriate sanction. The CCC rightly focussed on the key issues of whether the Appellant's mis-conduct was remediable and the likelihood of any repetition. Her history of misconduct was directly relevant to those issues."

22. The Committee also took into consideration the wider public interest, and the mandatory criteria set out at Regulation 4(2) of The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012. The Committee also had regard to the relevant provisions of the Pharmaceutical Society NI's Code of Professional Standards of Conduct, Ethics and Performance of Pharmacists in Northern Ireland (2016).

23. The Committee considers that the facts admitted are serious and do amount to misconduct.

24. The Committee considers that based on the facts admitted, and having given due weight to the background regulatory circumstances, that the Registrant's Fitness to Practise is currently impaired.

25. The Committee noted that the Registrant had:

a. Supplied a Prescription Only Medication without a prescription or the appropriate authority on two occasions.

b. The Registrant failed to make contact with a GP with regard to the supply of the medication to a vulnerable child, with potential risks to that child.

c. It is clear from one of the letters from the GP, that the supply of the Ranitidine medication was considered by the practise to be contrary to prescribing policy.

d. The Registrant provided the medication on the second occasion knowing that the GP would not authorise the medication.

e. In respect of both occasions the Registrant had supplied the medication contrary to the joint advisory letters issued by the Chief Medical Officer and Chief Pharmaceutical Officer, circulated to all community pharmacists in late 2019, stating that treatment with Ranitidine should not be initiated with new patients.

f. Having supplied the medication on two occasions, there was no evidence of due diligence, for example, no evidence of any consultation regarding the safe dosage of the medication.

26. The Committee further noted that the Registrant had only been restored to the Register one year before the relevant events, after having been removed from the Register for a period of 7 years prior to that, and yet was prepared to supply a prescription only medication to a young patient on two occasions, without the relevant authority, contrary to legal requirements.

27. The Committee consider that against that background the Registrant has not shown demonstrable insight, and there is clear concern about a risk of recurrence.

28. The Committee also conclude that it is in the public interest that there should be a finding of impairment in order to maintain public confidence in the profession and to maintain proper standards of professional behaviour.

DECISION AS TO SANCTION

29. The Committee is grateful for the detailed submissions on behalf of the Society, from Mr Shields, and on behalf of the Registrant, from Mr Fee QC.

30. The Committee has reviewed the Indicative Sanctions Guidance and reminded itself that its decision must be proportionate.

31. It acknowledges that the purpose of the sanction is not to be punitive, but to protect the public interest, and that the sanction it determines should impose no greater restriction on the Registrant than is absolutely necessary to achieve regulatory objectives.

32. The Committee is entitled to give greater weight to issues of public interest, and to the need to maintain public confidence in the profession, than to the consequences to the Registrant himself of the imposition of the appropriate sanction.

33. The Committee has to take into consideration issues of protection the public, maintenance of public confidence in the profession and the maintenance of proper standards of professional behaviour.

34. As is required, the Committee considered all the potential sanctions available to it, starting with the lowest potential sanction, to decide which was the most appropriate and proportionate sanction in the circumstances of this particular case.

35. The Committee considered both relevant mitigating and aggravating circumstances.

36. As to mitigating factors the Committee took into consideration that:

    a. The Registrant co-operated with the investigation, once it commenced.

    b. The Registrant made early admissions of fault.

    c. The Registrant accepted a Caution in respect of his behaviour.

    d. The Registrant, through his Counsel, approached this hearing in a responsible way, admitting the facts, admitting that the facts amounted to misconduct, and that as a consequence, his fitness to practise is currently impaired. This allowed the Committee to focus in on the issue of the most appropriate and proportionate sanction.

e. The Committee acknowledge the concessions made by the Registrant, through his Counsel, that he understood that his behaviour fell badly short of professional standards, and that he understood that his registration was in serious jeopardy.

f. The Registrant expressed through his Counsel remorse and shame at his actions and the impact that they have had on him.

g. The Committee also noted that the Registrant said he was put under significant pressure from a close friend in need, but of course the Registrant should not have bowed to that pressure and should have abided by basic professional standards.

h. Reference was made to the additional pressures of the pandemic on him and his practise at that time. The Committee does not consider that the pressures of the pandemic were the main reason for his unprofessional behaviour, but rather the Registrant succumbed to pressure from a friend when he clearly should not have done so, and he put himself in breach of basic legal requirements for a pharmacist.

i. The Committee also noted the content of the character references submitted to the Committee, and submissions concerning his personal background and positive contributions to the local community.

j. The Committee was informed that the Registrant practises in the Republic of Ireland and that during the period of his removal from the Register in Northern Ireland no concerns were raised about his practise in the Republic of Ireland during that time.

k. As far as his practise in Northern Ireland is concerned there have been no other issues from March 2020 to date.

37. As to aggravating factors the Committee considered the following relevant in its determination:

a. The Registrant supplied a Prescription Only Medication on two occasions without a prescription or the appropriate authority to do so.

b. He did so having acknowledged that he received the joint advisory letters issued by the CMO and CPO, which was circulated to all community pharmacists in late 2019, which stated that the treatment with Ranitidine should not be initiated with new patients.

c. He did so on a second occasion when it was clear that the GP would not authorise the medication, whether because of the costs of that, as asserted by the Registrant, or for prescribing policy reasons, as set out in one of the letters from the GP.

d. The Committee did not think that this was simply a technical issue but rather the supply of a POM without a prescription is a breach of a fundamental rule of practise, and is unlawful.

e. The request of him made by his friend should, in the Committee's view, have rung alarm bells with him, particularly so when a prescription was not forthcoming after the first occasion, and he should have applied more due diligence.

f. In spite of that, and the acknowledged contact from the GP the day after the first supply of the medication indicating that the medication would not be prescribed, the Registrant nevertheless chose to proceed to supply the medication on a second occasion without a prescription. The Committee feels that this was wholly unacceptable, and a serious error of judgement.

g. The Registrant provided no evidence that he made any attempt to ensure that the medication was correctly used, or to ensure that there was no adverse impact on a very young child, ignoring the content of the joint advisory letter.

h. Whilst the Committee acknowledged the Registrant's co-operation in the investigations that took place, and his approach to this hearing was responsible, the Committee did have some concerns that in his initial interview he admitted the initial supply of this medication, but did not disclose the supply on the second occasion until questioned by the investigator.

i. The Committee was also concerned that after having been removed from the register for seven years, and only one year after having been restored to the register, the Registrant made fundamental and serious errors of professional judgement.

j. The Committee was not satisfied that the Registrant had demonstrated effective remediation, or demonstrable insight, and had concerns about the risks of reoccurrence.

38. Referring to the potential sanctions the Committee considered that taking 'no action' or giving a 'warning' did not adequately reflect the seriousness of this case and did not address public interest issues appropriately.

39. The Committee was invited by Mr Fee QC to consider imposing Conditions. However, the Committee did not feel that the imposition of Conditions was appropriate. The Committee considered Conditions were unlikely to be workable. They were inappropriate to remediate the reasons for the Registrant's current impairment, and that there was not a realistic chance of them being met or capable of being verifiable. Conditions were unlikely to protect the public for their duration, or be sufficient to maintain public confidence in the profession, or to ensure the maintenance of proper standards of behaviour.

40. In all the circumstances the Committee do consider that a suspension for a period of twelve months is an appropriate and proportionate sanction in this case and would achieve the regulatory objectives, being in the public interest. The Committee considers that giving advice, a Warning or imposing Conditions would be insufficient to address

any potential risk to patient safety, or to protect the public. A Suspension is required here to highlight to the profession as a whole, and to the public, that the conduct of the Registrant is unacceptable and unbefitting a member of the pharmacy profession.

41. Finally, the Committee considers that the Registrant's behaviour is not fundamentally incompatible with being a registered professional, and the Committee does not think that removal from the Register is appropriate or proportionate.

42. In conclusion the Committee imposes a sanction of Suspension for a period of twelve months. The Committee recommend to the Registrant that he ensures that he is competent to resume practice in twelve months' time. A future Statutory Committee reviewing this suspension order may be assisted if the Registrant provides evidence of engagement in continual professional development in advance of the expiration of the twelve-month period.

INTERIM MEASURE

43. A period of 28 days is allowed for a registrant to lodge an appeal with the High Court. The decision of the Committee is not formally imposed until this period of appeal has formally ended or, where an appeal is brought, the date on which the appeal is fully disposed of. If the Committee considers that it is in the public interest to do so, it has the power to impose 'interim measures' until the appeal period is over or, if an appeal is successfully lodged, until the appeal has been fully disposed of.

44. The Committee noted that the Society did not make any submissions in favour of imposing an interim measure to cover the appeal period. The Committee further noted that the Society had not sought an Interim Order in this case. The Committee did not consider there to be a risk that the behaviour giving rise to the allegations would be repeated during the appeal period, and therefore considered it not in the public interest to impose an interim measure in this case.

COSTS

45. There was no application for costs.

Gary Potter

Chair of the Statutory Committee

27th May 2022