

**STATUTORY COMMITTEE OF THE PHARMACEUTICAL SOCIETY OF NORTHERN
IRELAND**

- In the matter of:** John Patrick McGuigan (4547)
- 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 June 2022.
- Committee:** Mr Gary Potter (Chair), Mr Derek Wilson (Lay), Mrs Liz Kerr (Registrant)
- Persons Present and Capacity:** Mr John McGuigan (Registrant), Mr Denis Hamill, Barrister, instructed by Ms Stephanie Johnston, Carson-McDowell (the Registrant's Legal Representatives), Mr JonPaul Shields, Barrister, instructed by Mr Brendan Tabb, 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 May 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 John McGuigan, a registered pharmacist (the Registrant). The Registrant was in attendance and was represented by Mr Denis Hamill, Barrister. 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 154. The hearing bundle included a Statement of Case on behalf of the Society, at pages 130 to 132 of the bundle. In the course of the hearing, the Committee admitted in evidence the following documents:
 - Exhibit 1: Fitness to Practise Statement of Case by the Pharmaceutical Society NI, received on 27th June 2022.
 - Exhibit 2: Letter from Mr Liam Bradley, Managing Director, Bradley's Pharmacy, dated 24th June 2022.

PRELIMINARY LEGAL ARGUMENTS

4. The Committee received no preliminary legal arguments.

ALLEGATIONS

5. The Registrant faced the following allegations:

It is alleged that your fitness to practise as a registered pharmacist may be impaired, pursuant to Paragraph 4(1)(a) of Schedule 3 to the Pharmacy (Northern Ireland) Order 1976 by reason of misconduct.

The particulars of the alleged misconduct from which it is alleged that impairment of fitness to practise arises are set out as follows, namely:

(a) On or about 14 June 2007, when applying to join the register of pharmaceutical chemists maintained by the Registrar of the Pharmaceutical Society of Northern Ireland, you made a false declaration by stating that you had not been convicted of an offence in a court of law whereas you were, in fact, on 22 February 2007 convicted of driving after consuming alcohol in excess of the prescribed limit contrary to Article 16(1)(a) of the Road Traffic (NI) Order 1995.

(b) From 23 May 2008 until 12 May 2017, each year after your first registration with the Pharmaceutical Society of Northern Ireland, you made a false declaration on your yearly retention form in that you failed to declare that you were, on 22 February 2007, convicted of driving after consuming alcohol in excess of the prescribed limit contrary to Article 16(1)(a) of the Road Traffic (NI) Order 1995.

(c) Your actions, as described at paragraph 1 and 2 above, were dishonest in that (a) you knew that you were required to declare such a conviction, (b) you failed to declare the conviction at the point of first registration, and (c) you completed and submitted the retention form each year for 10 years, knowing that you had made a false declaration in the retention form.

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 and in the Pharmaceutical Society of Northern Ireland's Code of Ethics (2009) and 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 obligations by reason of the misconduct particularised above.

2009 Code:

- *Principle 7: Act with Honesty and Integrity*
 - *7.1: Maintain public Trust and confidence in your profession by acting with honesty, integrity and professionalism.*
 - *7.2: Demonstrate high standards of personal and professional conduct at all times.*

2016 Code:

- *The general principle of registration as a pharmacist that requires you to act to promote and maintain public confidence in the pharmacy profession*
- *Principle 3 – Act with professionalism and integrity at all times*
 - *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.*
 - *Standard 3.1.3 - When providing information or advice, in whatever format, do so accurately, clearly and unambiguously.*

- *Standard 3.1.6 – Promptly inform the regulator, your employer and other relevant authorities of any circumstances that may call into question your fitness to practise or has the potential to bring the profession of pharmacy into disrepute.*
- *Standard 3.1.7 – Make sure that any documents you complete or sign are not false or misleading, or contain false or misleading information. Take all steps that are reasonably necessary to ensure that recorded information is correct and complete. Do not omit relevant information.*

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 11 in the Statement of Case of the Pharmaceutical Society NI, which was included at page 130 of the hearing bundle, were accepted and agreed by the parties. Paragraphs 1 to 11 of the statement of case being as follows:

1. The Registrant is currently a registered pharmacist in Northern Ireland having first registered with the Society in July 2007.

2. The Registrant is currently employed by Bradleys Pharmacy NI, located at Unit 11 Dromore Road industrial Estate, Dromore Road, Omagh, County Tyrone, BT78 1RE, commencing his employment there in November 2020. The Registrant is employed as an area manager with compliance pharmacist responsibilities.

3. In March 2021, the Registrant made a declaration to the Pharmaceutical Society of Northern Ireland, that on 22nd February 2007, he was convicted of driving whilst under the influence of alcohol, was fined and disqualified from driving for 12 months, reduced to 9 months upon completion of a drink driving course.

4. The offence was committed on 19th November 2006.

5. The Registrant did not declare this conviction, as he was obliged to do, when he first applied to be registered with the Society as a Pharmaceutical Chemist. On 14th June 2007, when completing the registration application form, he failed to disclose the, at that stage, very recent conviction. In July 2007, he was added to the Register of Pharmaceutical Chemists on foot of the false declaration. No further investigations were undertaken by the Society at that point because the Registrant did not disclose a relevant fitness to practise matter.

6. On 23rd May 2008, as part of the retention process, the Registrant again failed to correctly inform the Society that he had a relevant conviction. This conviction ought to have been disclosed as part of the retention process.

7. The Registrant subsequently did not declare this conviction each year following 2008 until, and including, 2017. False declarations were made during each of those years as part of the retention process. The final false declaration was made on 12th May 2017.

8. The obligation to disclose this conviction by the Registrant ceased from 22nd February 2018. Article 4 of the Rehabilitation of Offenders (Exceptions) (Amendment) Order (NI) 2014 introduced a new Article 1A into the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 with the result that the conviction from 2007 became a protected conviction after 11 years and the obligation to declare ceased. From 22 February 2018, the Registrant no longer needed to declare the conviction.

9. The Registrant's self-declaration in March 2021 brought the false declarations to the Society's attention. It is unlikely that the Society would have detected the facts constituting the misconduct without the Registrant's declaration.

10. There is no evidence to suggest that the Registrant continued to have any issues with inappropriate alcohol consumption which would have impacted his health or fitness to practise in the intervening years.

11. The defendant's conduct was dishonest in that he knew he should declare the conviction at the point of first registration and thereafter as part of the retention process and he knowingly failed to make the appropriate and correct declaration on each occasion, when required to do so.

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 1, and a Letter from Mr Liam Bradley, on behalf of the Registrant, Exhibit 2. The Committee received oral evidence from the Registrant. The Committee received oral submissions from Mr Shields on behalf of the Society and Mr Hamill on behalf of the Registrant.

DECISION ON IMPAIRMENT OF FITNESS TO PRACTISE

10. In this case, misconduct has been admitted by the Registrant.

11. The committee has considered relevant case law, and in particular,

(a) In GMC –v- Meadow 2006 EWCA CIV1319 the Court of Appeal said,

"The purpose of FTP procedures 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 (Panel) 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."

(b) In CHRE –v- NMC & Grant 2011 EWHC 927 the Court confirmed the test to be applied was a current, forward looking one, confirming the question that the committee has to ask itself and determine was:

"Is this registrant's current fitness to practise impaired?"

(c) In Cohen –v- GMC 2008 EWHC 581 the Court said,

"As 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;"; and

"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."

(d) Further, 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 FTTP 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)."

12. The Committee considered the provisions of Regulation 4(2) of the Council of the Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012 They provide mandatory criteria that this Committee must have regard to when considering whether or not a person's fitness to practise is in fact currently impaired. Regulation 4(2) states;

"In relation to evidence about the conduct or behaviour of the registered person which might cast doubt on whether the requirements as to fitness to practise are met in relation to the registered person, the statutory committee must have regard to whether or not that conduct or behaviour –

- (a) Presents an actual or potential risk to patients or to the public;*
- (b) Has brought or might bring, the profession of pharmacy into disrepute;*
- (c) Has breached one of the fundamental principles of the profession of pharmacy as defined in the standards, or*
- (d) Shows that the integrity of the registered person can no longer be relied upon."*

13. Having considered the relevant legal position, the Committee then looked at the Registrant's past misconduct, the steps, if any, he has taken to remediate, whether there is any evidence of insight, and whether there are risks of recurrence.

14. Submissions were received on behalf of the Society from Mr. Shields and from Mr. Hamill for the Registrant. Nevertheless, the Committee is required to make an independent decision as to whether the Registrant's fitness to practise is currently impaired.

15. In considering the question of impairment, the Committee is obliged to look back at misconduct. In this case the Committee knows that:

- (i) When applying to join the register of pharmaceutical chemists the Registrant made a false declaration;
- (ii) A very recent conviction ought to have been disclosed at the point of application;
- (iii) The Registrant's failure to disclose prevented the then Registrar from undertaking enquiries into the matter and into the fitness of the Registrant to practise;
- (iv) The Registrant made ten further false declarations on his yearly retention form, until the obligation to report lapsed;
- (v) Each of the declarations made involved a dishonest act;
- (vi) The acts constituting the misconduct at issue were not isolated, but repeated;
- (vii) The misconduct spanned an eleven year period; and
- (viii) The misconduct related to his registration and continuing registration as a pharmacist.

16. At this stage the Committee must also look at any steps that have been taken by the Registrant to remediate, and consider whether the Registrant has insight into the source of their failings, whether there has been effective remediation and whether there is any risk of recurrence.

17. The Committee had the benefit of hearing oral testimony under oath from the Registrant. The Committee is satisfied that the Registrant has shown demonstrable insight. The Committee is satisfied that he has taken all steps he can to remediate matters and that there is no risk of reoccurrence in this individual case.

18. The Registrant admitted that he made the wrong decision at the time of his initial declaration and compounded matters by making the wrong decision in ten subsequent applications. He accepted that he should have told the truth from the beginning and should have informed the Registrar of the conviction. He expressed shame and deep regret for

his actions. He accepted that he knew he should have declared the conviction. He said that he was terrified about losing his job as a pre-registration trainee, and subsequently as a registrant. He had the benefit of the support from his parents to qualify as a pharmacist and he did not want to let them down. He found the interaction with the police and the court to be very traumatic. He admitted that he had made the wrong choices, but having made the wrong choices, he now wanted to put things right. He said that he felt completely imprisoned by his choices and that fear ruled his head rather his conscience. He accepted that his job required honesty. He accepted that the public needed to have confidence in him and in the pharmacy profession as a whole. He was concerned that his choices might reflect badly on his employer. The Committee did receive very supportive references from his employer who provided those with full knowledge of the Registrant's behaviour. The Committee also noted the attendance of his employer at the hearing to support the Registrant.

19. The Registrant told the Committee that he had worked as a pharmacist since 2007 and had worked without any other blemishes on his career. The Committee also took in consideration the fact that it was the Registrant himself who brought these matters to the attention of the Society and at a time when he was not legally obliged to do so. There is no evidence to suggest that the Registrant had a significant problem with alcohol in or around, or after, 2007 so any FTP investigation at that time could well have been resolved in his favour.
20. However, the Committee has to consider the wider public interest when determining questions of impairment. The Statutory Committee is entitled, and in fact obliged, to have regard to the public interest in the form of (a) upholding standards, and (b) maintaining public confidence in the pharmaceutical profession generally, and in the individual pharmacist in particular, when determining whether established behaviour currently impairs the fitness to practise of a registrant.
21. Looking at Regulation 4(2), The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012, the Committee considers that, subparagraphs (b) and (c) are engaged in that, the Registrant's behaviour has brought the profession of pharmacy into disrepute and he has breached one of the fundamental principles of the profession of pharmacy. Honesty and integrity

are core and fundamental professional values. Standard 3.1 of the Code (2016) says "Act with honesty and integrity at all times".

22. The Committee believes that it is in the public interest that there should be a finding of current impairment. The need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in this case. It would send the wrong message to the public at large, and the profession in particular, if there was not a finding of current impairment, particularly given the finding of dishonesty.

DECISION AS TO SANCTION

23. The Committee is grateful for the detailed submissions on behalf of the Society, from Mr Shields, and on behalf of the Registrant, from Mr Hamill.
24. The Committee has reviewed the Indicative Sanctions Guidance and reminded itself that its decision must be proportionate.
25. 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.
26. 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.
27. The Committee has to take into consideration issues of protection of the public, maintenance of public confidence in the profession and the maintenance of proper standards of professional behaviour.
28. 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.

29. The Committee considered both relevant mitigating and aggravating circumstances.
30. As to mitigating factors the Committee took into consideration that:
- a. It was the Registrant himself who brought the conviction to the attention of the Society.
 - b. It is acknowledged that it is highly unlikely that the Registrant's misconduct would have otherwise been detected by the Society if he had not done so.
 - c. There is no evidence to suggest that the Registrant had any significant problem with alcohol in or about, or after, 2007.
 - d. If the Registrant had notified the Society of the conviction, at the time, as he should have done, it is unlikely that the facts of the conviction would have interfered with his registration in 2007.
 - e. The Registrant has practiced as a Pharmacist from 2007, with no other blemishes in his career.
 - f. The Committee benefited from hearing the Registrant's oral testimony under oath and were impressed with the very open and honest evidence that he gave.
 - g. The Registrant attended the hearing with his wife, and his employer, in support.
 - h. His employer provided a reference on 7th May 2021 confirming that the Registrant brought matters to his attention. With full knowledge of matters, his employer declared that the Registrant has his full support both as a pharmacist and as a person.
 - i. In his reference of the 24th June 2022, updating the Committee with current information, his employer said:

- i. The Registrant has taken on additional roles in the pharmacy.
 - ii. His employer delegated the role of dealing with professional compliance issues within the pharmacy company to the Registrant.
 - iii. The Registrant has demonstrated that he has resolved many professional issues in the workplace and has done so in a manner that has been professionally correct, supporting the staff involved, and has implemented learning from such incidents for the benefit of pharmacists and other staff.
 - iv. The Registrant has also taken on the role of organising training for Foundation Year Pharmacists to assist them in passing their examinations for entry into the Pharmaceutical Society NI.
 - v. The Registrant has recently taken on the lead in implementing a new service providing valuable pharmacy services to the local community,
 - vi. He has taken on the role of area manager within the pharmacy company, providing support and guidance for pharmacists employed within the company and has ensured, in that role, that the pharmacists and their staff comply with their professional responsibilities, and that any recommendations of the Pharmaceutical Inspector are implemented.
 - vii. Finally, his employer, from a position of 30 years' experience, has indicated that he depends on the Registrant greatly for support and advice.
- j. The Committee considers this evidence to be of great benefit when considering the most appropriate and proportionate sanction.
- k. The Committee also gave weight to other very supportive testimonials, including from a GP who works with the Registrant who declared the Registrant to be completely reliable and trustworthy.
- l. The Committee was satisfied on the evidence that the Registrant had taken all steps he could to remediate matters, that he had shown demonstrable insight and there is no risk of reoccurrence in this individual case.

m. The Committee also took into account that the Registrant admitted the facts, that they amounted to misconduct, and made no contrary submissions through his Counsel that his fitness to practise was not currently impaired.

n. The Registrant cooperated with the Society and the Committee throughout this process.

31. As to aggravating factors the Committee took into consideration that:

a. When applying to join the register of pharmaceutical chemists the Registrant made a false declaration;

b. A very recent conviction ought to have been disclosed at the point of application;

c. The Registrant's failure to disclose prevented the then Registrar from undertaking enquiries into the matter and into the fitness of the Registrant to practise;

d. The Registrant made ten further false declarations on his yearly retention form, until the obligation to report lapsed;

e. Each of the declarations made involved a dishonest act;

f. The acts constituting the misconduct at issue were not isolated, but repeated;

g. The misconduct spanned an eleven year period; and

h. The misconduct related to his registration and continuing registration as a pharmacist.

32. Referring to the potential sanctions, starting at the lowest, the Committee did not consider that taking no action adequately reflected the Committee's findings on impairment and did not address public interest issues appropriately. The Committee did not think that it would be in the public interest to take no action.
33. Given the particular circumstances of this case, the Committee did consider that a Warning, which should appear against the Registrant's name on the register for a period of twelve months, was the most appropriate and proportionate sanction in this case, and would achieve the regulatory objectives, and would be in the public interest. The Committee took into consideration the Guidance on how to deal with dishonesty cases, and the relevant case law, including *Lusinga v NMC* [2017] EWHC 1458 (Admin). The Committee acknowledged that there are different levels of dishonesty and that a one size fits all approach to the individual facts of this case, would not be appropriate or proportionate. The Committee was clear that there was no risk to the public arising from the Registrant's actions. The Committee did not think there would be any significant impact upon public confidence in the Registrant, or in the pharmacy profession as a whole, given the evidence that the Committee has received. The Registrant said in his evidence that his behaviour was unacceptable. The Committee considers that a Warning is needed to demonstrate to the Registrant, and in particular more widely to the profession and the public, that his behaviour fell below acceptable standards. The Committee took into account the fact that the Registrant had shown demonstrable insight, that he had taken all steps that he could to remediate matters, and was satisfied that there was no risk of occurrence in this individual case.
34. The Committee did consider whether imposing Conditions was appropriate, but given the evidence that it received, the Committee was not clear what else the Registrant could do to right the wrong that he has not already done. Quite clearly, he was, and is considered to be, by his employer and other healthcare professionals, a highly experienced, trustworthy and capable healthcare practitioner.
35. The Committee next considered the potential sanction of suspension. The Committee did not think that this sanction was appropriate or proportionate and was not necessary to achieve the regulatory objectives. The Committee was of the view that the particulars of each individual case are important. There would undoubtedly be some dishonesty cases where suspension would be appropriate and proportionate. The Committee took into

account the overwhelming mitigating factors in this case, and including the oral testimony of the Registrant. The Committee also took into account the fact that it was important, and indeed, in the public interest, to retain the services of a highly experienced, trustworthy and capable healthcare practitioner, who has continued to deliver valuable services to the public at large.

36. Finally, the Committee did not consider that the Registrant's behaviour was fundamentally incompatible with being a registered professional. The Committee considered that removal of the Registrant from the Register would in fact be contrary to the public interest on the evidence.

COSTS

37. No costs application was made by the Society.

Gary Potter

Chair of the Statutory Committee

27th June 2022

SCHEDULE

Warning with a finding of current impairment

Abide by and make reference to all professional standards, and seek appropriate guidance when necessary.