

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

In the matter of: Steven Anthony Lowery (3340)

Location: The offices of the Pharmaceutical Society NI, 73
University Street, Belfast, BT7 1HL.

Date: 8th December 2022.

Committee: Mr Gary Potter (Chair), Mr Derek Wilson (Lay), Dr Mark
Timoney (Registrant)

Persons Present and Capacity: Mr Steven Lowery (Registrant), Ms Lara Smyth,
Barrister, instructed by Mr Garrett Greene, McCann and
McCann (the Registrant's Legal Representatives), Mr
JonPaul Shields, Barrister, instructed by Ms Anna
McClimonds, CFR Solicitors (PSNI's Legal
Representatives), Mrs Katie Quinn, Legal Officer.

Service

1. The Committee noted that the Notice of Hearing dated 8th November 2022 was sent to the Registrant's registered address on the same day. The Committee noted that this did not meet 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'). In considering the issue of service the Committee regarded the purpose of the 35-day notice period to be to ensure that the parties to the proceedings have adequate time to prepare for the hearing. The Committee further noted that in relation to this case a Case Management

Meeting was held on 4th October 2022, and was attended by the Registrant's legal representative and the legal representatives of the Society; at the Case Management Meeting of 4th October 2022, the date of the 8th December 2022 was proposed and agreed between the Chair of the Statutory Committee and the parties, as the dates for the hearing. The Committee sought representations from the Society and the Registrant in relation to the fact that the Notice of Hearing did not meet the requirements under Regulation 18 and if this raised any issues with regards their ability to prepare for the hearing. Both Counsel for the Society and the Registrant confirmed that their preparations for the hearing had not been impacted by the late Notice of Hearing and they had no objections to proceeding.

2. As neither the Registrant or the Society raised any issues with regards their ability to prepare for the hearing, the Committee decided that no prejudice to either party would be caused by proceeding with the hearing and not to proceed would cause unnecessary delay.
3. The Committee heard allegations of misconduct in respect of Mr Lowery, a registered pharmacist (the Registrant). The Registrant was in attendance and was represented by Ms Lara Smyth, Barrister. The Pharmaceutical Society of Northern Ireland (the Society) was represented by Mr Jonpaul Shields, Barrister.
4. The Committee had a hearing bundle numbering page 1 to page 198. 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 6th December 2022.
 - Exhibit 2: Agreed Facts, dated 8th December 2022
 - Exhibit 3: Fitness to Practise Statement of Case by the Pharmaceutical Society NI, undated.
 - Exhibit 4: Statement of Mr Steven Lowery, entitled Referral to the Scrutiny Committee, undated.

- Exhibit 5: Reference on behalf of the Registrant of a Mr Paul Savage, dated 12th June 2022
- Exhibit 6: Copy of an email entitled, CDsmart subscription started, dated 07 November 2022

PRELIMINARY LEGAL ARGUMENTS

5. There were no preliminary legal arguments.

ALLEGATIONS

6. 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 (as amended) 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:

That you, as a director of Dunmore Pharma Ltd, and holding the role of superintendent pharmacist for that company, and having effective control over the business:

1. *On various dates on and between 22nd April 2020 and 19th July 2021 you, as superintendent of Dunmore Pharma Ltd, caused or allowed controlled drugs in schedule 1 and 2 of the Misuse of Drugs Regulations (Northern Ireland) 2002 to be received into a Pharmacy, namely Dunmore Pharmacy, without making, or causing to be made, an appropriate entry in a Controlled Drug Register in contravention of Regulations 19 and 20 of the Misuse of Drugs Regulations (Northern Ireland) 2002.*

2. *On various dates on and between 11th February 2021 and 19th July 2021 you, as superintendent of Dunmore Pharma Ltd, caused or allowed controlled drugs in schedule 1 and 2 of the Misuse of Drugs Regulations (Northern Ireland) 2002 to be supplied from a Pharmacy, namely Dunmore Pharmacy, without making, or causing to be made, an appropriate entry in a Controlled Drug Register in contravention of Regulations 19 and 20 of the Misuse of Drugs Regulations (Northern Ireland) 2002.*

3. *On various dates on and between 22nd April 2020 and 19th July 2021 you, as superintendent of Dunmore Pharma Ltd, caused or allowed controlled drugs in schedule 1 and 2 of the Misuse of Drugs Regulations (Northern Ireland) 2002 to be received into and supplied from a Pharmacy, namely Dunmore Pharmacy, without making, or causing to be made, an appropriate record in breach of the Pharmacy's Standard Operating Procedure.*

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 and the following principles and obligations contained in the 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.

- *The general principle of registration as a pharmacist that requires you to act to promote and maintain public confidence in the pharmacy profession*
 - *Principle 1 – Always put the patient first and, in particular, standard 1.1 and 1.2 and the associated obligations set out below.*
 - *Standard 1.1 – Treat those in your care with respect and dignity.*

- *Standard 1.1.1 – Always consider, and act in, the best interests of the patient or service user*
- *Principle 2 – Provide a safe and quality service and, in particular, standard 2.1 and 2.3 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.*
 - *Standard 2.1.4 – Ensure that workload or working conditions do not compromise patient care or public safety*
 - *Standard 2.1.5 Make sure that your actions do not prevent or inhibit others from complying with their legal or professional obligations*
 - *Standard 2.1.6 – Ensure that you do not, whether by actions or omissions, create a risk to patient care or public safety.*
 - *Standard 2.1.12 – Ensure you are aware of and adhere to all relevant legislation, and all current standards and guidance which apply to your practise*
 - *Standard 2.3 – Record, store and process data clearly and accurately and, in particular standard 2.3.1*
 - *Standard 2.3.1 – Complete records promptly or as soon as reasonable practicable after the patient intervention or activity has occurred.*

- *Standard 2.3.3 – Ensure all entries in any record are accurate, clearly and legibly written and attributable.*
- *Standard 2.3.4 – Keep all records securely and in an organized manner and for the appropriate period of time*
- *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 3.1.7 – 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 reasonable 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

7. 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 12 in the Statement of Agreed Facts (Exhibit 2), were accepted and agreed by the parties. Paragraphs 1 to 12 of the Statement of Agreed Facts being as follows:

1. *The Registrant is currently registered as a pharmacist with the Pharmaceutical Society of Northern Ireland ("the Society"), having first registered on 3rd August 1998. He is currently the Director of Dunmore Pharma Ltd, which owns Dunmore Pharmacy, 421 Antrim Road, Belfast BT15 3BJ. He was also the Superintendent of Dunmore Pharma Ltd until 7th June 2022.*

2. *During the course of inspections at Dunmore Pharmacy during July 2021 by a Pharmacy Inspector from the Medicines Regulatory Group ('MRG'), controlled drug registers were retrieved and a reconciliation undertaken of wholesale dates of purchases made by the pharmacy and prescriptions submitted for payment to the Business Services Organisation.*

3. *On a number of occasions, it was identified that entries had not been made in a relevant register in respect of (i) purchases; and (ii) supplies of Controlled Drugs as required by the Misuse of Drugs Regulations (Northern Ireland) 2002 ("the 2002 Regulations").*

4. *Regulation 19 of the 2002 Regulations requires an authorised person to keep a register and enter in that register, in chronological sequence, particulars of Schedule 1 and 2 controlled drugs obtained by him or supplied by him. Separate registers must be maintained in respect of each class of drug.*

5. *Regulation 20 of the 2002 Regulations identifies the requirements that must be met where any person is required to keep a register pursuant to Regulation 19. In particular, Regulation 20(b) mandates that:*

"every entry required to be made under regulation 19 in such a register shall be made on the day on which the drug is obtained or, as the case may be, on which the transaction in respect of the supply of the drug by the person required to make the entry takes place or, if that is not reasonably practicable, on the day next following that day"

6. *The Misuse of Drugs Regulations impose mandatory requirements on pharmacists who obtain and supply controlled drugs falling into Schedules 1 and 2 and, in this case, the Registrant, as superintendent of the pharmacy business was obliged to ensure that registers of controlled drugs were properly kept and maintained.*

7. There is a mandatory requirement (Regulation 19(1)(a)) to record every such drug obtained and every such drug supplied. Due to the nature of these drugs, their possession and supply are tightly controlled. Regulation 20 contains a number of requirements in relation to keeping the registers and how entries must be made and, in particular, when the entries must be made. The 2002 Regulations require the Controlled Drug registers to form a permanent record of the movement of the most restricted drugs within the pharmacy.

8. The Registrant did not ensure that all controlled drugs coming in to the pharmacy (on various dates between 22/04/20 and 19/07/21) were entered into the appropriate CD Register in line with the legislative duty.

9. The Registrant's SOP required controlled drugs received into the pharmacy to be entered immediately. The SOP was not followed in all cases of such drugs received.

10. The Registrant also did not ensure that all supplies of controlled drugs (on various dates between 11/02/21 and 19/07/21) were entered into the appropriate CD Register in line with the legislative duty.

11. The Registrant's SOP required controlled drugs supplied out of the pharmacy to be entered on the day of the supply or on the next day. The SOP was not followed in all cases of such supply.

12. The majority of the transactions at issue occurred between February 2021 and July 2021 as can be seen from the tables contained between pages 120 and 124 of the Committee's bundle. There are a small number of transactions in 2020. The controlled drugs involved included, but are not limited to, Methylphenidate, Tapentadol, Morphine, Oxycodone and Fentanyl.

8. As the Registrant accepted the facts as set out in paragraph seven, 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).

9. Accordingly, the Committee found the allegations proved.

10. The Committee then moved to consider the issue of impairment of Fitness to Practise.

DECISION ON IMPAIRMENT OF FITNESS TO PRACTICE

11. In this case, misconduct has been admitted by the Registrant through his Counsel.

12. 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 practice. The (Panel) thus looks forward not back. However, in order to form a view as to the fitness of a person to practice 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 practice impaired?"

(c) The Committee's attention was drawn to paragraphs 64 and 65 in Cohen –v- GMC [2008] EWHC 581.

At paragraph 64 the Court said,

"There must always be situations in which a Panel can properly conclude that the act of misconduct was an isolated error on the part of a medical practitioner and that the chance of it being repeated in the future is so remote that his or her fitness to practice has not been impaired. Indeed the Rules have been drafted on the basis that the once the Panel has found misconduct,

it has to consider as a separate and discreet exercise whether the practitioner's fitness to practice has been impaired."

At paragraph 65,

"It must be highly relevant in determining if a doctor's fitness to practice 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."

13. The Committee considered the provisions of Regulation 4(2) of the Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practice and Disqualification) Regulations (N.I.) 2012 ("the Regulations"). They provide mandatory criteria that this Committee must have regard to when considering whether or not a person's fitness to practice 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 practice 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."*

14. 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.

15. The Committee received a Fitness to Practise Statement of Case, by the Pharmaceutical Society NI, Exhibit 3. The Committee received oral submissions from Mr Shields on behalf of the Society. The Committee received oral submissions on behalf of the

Registrant from Ms Lara Smyth. Whether or not submissions had been made to the Committee, the Committee is nevertheless required to make an independent decision about whether the registrant's Fitness to practise is impaired.

16. After consideration, the Committee concluded that the Registrant's fitness to practice is currently impaired.

17. In this case, the Committee heard that the Registrant -

- i. Was, at the relevant time, the Superintendent of the business;
- ii. Failed to maintain proper records in the pharmacy from February 2021 to July 2021;
- iii. Failed to ensure that the mandatory legal obligations flowing from the Misuse of Drugs Regulations (Northern Ireland) 2002 with respect to controlled drug record keeping were complied with;
- iv. Failed to properly record schedule 1 and 2 drugs coming into, and going out of, the pharmacy;
- v. Allowed this situation to persist over an extended period of time from February 2021 to July 2021 on multiple occasions, the Committee heard approximately 91 occasions, involving multiple registers; and
- vi. Failed to ensure that the Standard Operating Procedure (SOP) that the Registrant had designed and implemented was actually followed.

18. The Committee was aware that the facts highlighted fundamental practice issues that would be applicable to all pharmacists, and that the issues giving rise to the allegations involved controlled drugs. For a period of time, and on approximately ninety-one occasions, not on an isolated occasion, the Registrant failed to adhere to fundamental legislative requirements and failed to adhere to his own SOP.

19. Whilst the Committee acknowledged the following:

- The prompt and proper steps taken by the Registrant to remediate these omissions
- That he has admitted the omissions at the earliest opportunity
- He has met the allegations responsibly before the Committee

- That his actions show demonstrable insight
- That he has effectively remediated the problems that arose, and
- That there is a negligible risk of recurrence,

nevertheless, the public interest issues are such that the Committee considered that there should still be a finding of current impairment.

20. 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. At paragraph 74 of the Grant case, Cox J states the following:

"In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether 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 the particular circumstances."

22. The Committee did consider the need to uphold proper professional standards and public confidence in the profession and that such standards and public confidence would be undermined if a finding of impairment was not made in this case. The Committee considered the provisions of Regulation 4(2) of the Regulations. The Committee considered that the facts, as admitted, demonstrated that the Registrant had breached fundamental principles of the profession of pharmacy as defined in the Standards. The Committee accepts there was a potential risk to patients arising from the failure to strictly keep proper records and adhere to the SOP. Quite simply proper record keeping is a fundamental requirement and compliance with the law is similarly a fundamental obligation. The agreed facts do not indicate that this was an isolated error, that might have occurred on one or two occasions, but rather occurred over a number of months on ninety-one occasions.

23. In conclusion, the Committee considered that it is in the public interest that there should be a finding of current impairment and that there is a need to uphold proper standards and public confidence in the profession in making such a finding.

DECISION AS TO SANCTION

24. The Committee is grateful for the detailed submissions on behalf of the Society, from Mr Shields, and on behalf of the Registrant, from Ms Smyth.

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

26. The Committee acknowledged 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.

27. 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.

28. 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.

29. 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.

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

31. As to mitigating factors the Committee took into consideration:

- a. The prompt and proper steps taken by the Registrant to remediate his omissions
- b. He recruited a new pharmacist who is now Superintendent of the pharmacy
- c. He stood down as Superintendent of the pharmacy
- d. He decided to sell one of his pharmacies to ensure that the provision of pharmaceutical services continued to meet the highest professional standards
- e. He investigated, sourced, and installed an electronic register in the pharmacy
- f. He enrolled a staff member in the pharmacy dispensing team in the National Pharmacy Association's (NPA) new BTEC Level 3 Diploma – "Principles and practices for pharmacy technicians", to strengthen his support team within the pharmacy and to facilitate time for greater patient care
- g. He cooperated with the MRG and the Society, once investigations commenced
- h. He admitted the facts, and that they amounted to misconduct
- i. There was no evidence of diversion of drugs
- j. There was no evidence of actual harm to the public
- k. The Registrant did acknowledge through his Counsel, and through his written statement, that he understood the potential risk of harm to the public
- l. He acknowledged through his Counsel and through his written statement the importance in terms of public safety, and public interest, for there to be strict compliance with the Misuse of Drugs Regulations (Northern Ireland) 2002, and his SOP
- m. He acknowledged through his Counsel and written statement how a breach of the legislation had the potential to undermine the public's trust and confidence in him and in the pharmacy profession as a whole
- n. Further inspections did not disclose any significant matters of concern and a significant period of time has elapsed since the omissions occurred
- o. The Registrant was dealing with considerable work pressures during the pandemic
- p. That he had to deal with the bereavement of a close family relative

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

- a. The Registrant had failed to comply with fundamental legislative requirements from February 2021 to July 2021
 - b. The Registrant had failed to comply with the SOP during this time
 - c. The matters which gave rise to the allegations arose from the failure to strictly keep proper records and to strictly adhere to the SOP

33. 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 the public interest appropriately. The Committee did not think that it would be in the public interest to take no action.

34. The Committee did consider that a Warning, which will 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. The Committee believed that this sanction would achieve the regulatory objective and would be in the public interest. This sanction reflects the need to demonstrate to the Registrant, and more widely to the profession, and the public, that his conduct fell below acceptable standards. The Committee also consider that the imposition of a Warning is appropriate in this case, given that the Registrant has shown demonstrable insight, that he has effectively remediated the problems that arose, and that there is a negligible risk of recurrence.

35. The Committee considered whether imposing Conditions would be an appropriate sanction. The Committee did not consider that imposing conditions would be appropriate in this case. The Committee did not think that any suitable Conditions could be imposed, which would be practicable, and which could be directed towards the misconduct in this case, particularly given the prompt and proper steps taken by the Registrant to address the identified omissions in his practice between February and July 2021.

36. The Committee next considered the sanction of Suspension. The Committee did not consider that this sanction was appropriate or proportionate.

37. The Committee did not consider that the Registrant's behaviour was fundamentally incompatible with removal from the Register, and in fact, removal from the Register would be contrary to the public interest.

COSTS

39. No costs application was made by the Society.

Gary Potter

Chair of the Statutory Committee

8th August 2022

SCHEDULE

WARNING WITH A FINDING OF CURRENT IMPAIRMENT

To assiduously observe and effect all legal requirements and standard operating procedures in every aspect of his delivery of pharmaceutical services.