



Report of the Professional Conduct Committee to the  
Council of the Pharmaceutical Society of Ireland  
following an Inquiry held pursuant to Part 6 of the  
Pharmacy Act 2007.

## Inquiry Summary

Registered Pharmacist:

Mr Mark Shalvey

Registered address:



Registration Number:

5022

Complaint Reference:

618.2021

Date of Inquiry:

22 November 2022, 21 February & 03 August 2023

Public or Private Hearing:

Public

Meeting Format

PSI House, 12-15 Fenian Street, D2 and MS Teams

Members of Inquiry Committee:

Mr Dermott Jewell  
Ms Valerie Beatty  
Mr Aidan Murphy MSPI

Legal Assessor:

Mr Frank Beatty S.C.

## Appearances:

For the Registrar:	Mr Hugh McDowell
	Ms Dena Keane, Solicitor, Fieldfisher LLP Solicitors
For the Registrant:	Unrepresented
Registrant in attendance:	No
Witnesses (if applicable):	Dr Catriona Bradley, IIOP Ms Ciara Dooley, PSI Ms Emma Pierce, PSI
Other Attendees:	Deirdre O'Malley, D. O'Malley Stenography
In Attendance from the PSI:	Mr Des Butler, Regulatory Solicitor, PSI Ms Anna Malone, Regulatory Executive, PSI
Exhibits:	A. Core Book. B. Online Continued Registration Acknowledgment.

## **1. Subject Matter and Nature of the Complaint and Proceedings**

The complaint was received by the Registrar of the Pharmaceutical Society of Ireland (PSI) on 16 April 2021 and is contained at Tab 3 of the Core Book and relates to the Respondent's non-engagement with the ePortfolio Review Process and his continuing professional development obligations and refers to a report from the Head of Education and Registration. The PPC considered the complaint and decided to refer it to the Professional Conduct Committee on 12 August 2021 (contained at Tab 6 of the Core Book) and referred it to this Committee pursuant to section 40(1)(b)(i) of the Pharmacy Act 2007 (as amended) (the 2007 Act) on the grounds of professional misconduct within the meaning of s. 35(1)(a) and s.35(1)(f) of the 2007 Act.

The Allegations contained in the Notice of Inquiry dated 10 August 2022 (contained at tab 1 of the Core Book) (the Notice of Inquiry) are that the Respondent failed to undertake or demonstrate that he undertook continuous professional development for the annual periods 2018/19, 2019/20 and 2020/21. It is further alleged that the Respondent failed to respond to one or more requests from the Irish Institute of Pharmacy (the IIOF) to submit his ePortfolio Review for the said years. It is also alleged that the Respondent failed to engage and/or co-operate with the PSI appropriately or at all regarding his compliance with continuous professional development for the year 2018/19 and/or that he failed to respond to a request from the PSI to submit his ePortfolio Review to the IIOF for that year. Further, it is alleged that the Respondent answered five questions in his Continued Registration Form for the period 2019/20 in the affirmative in circumstances where the declarations were false, inaccurate, and misleading.

The Committee accept that the burden and standard of proof is on the Registrar and is beyond reasonable doubt. The hearing was heard in public.

## **2. Applications**

There was a preliminary application by the Registrar to proceed in circumstances where the Registrar submitted that the Respondent had been served but was not in attendance and was not legally represented, which application proceeded on 22 November 2022. The Committee decided not to proceed with the hearing on 22 November 2022 and its reasoned decision can be found in the transcript of the hearing on 22 November 2022, at pages 31-32.

The Registrar renewed the Application on 21 February 2023 that the Inquiry proceed in circumstances where the Respondent had been served but was not in attendance and was not legally represented. The Committee decided to proceed with the hearing on 21 February 2023 and its reasoned decision can be found in the transcript of the hearing at pages 22-23.

## **3. Allegations**

The allegations made against the Respondent in the Notice of Inquiry dated 10 August 2022, as amended at the hearing, is that, whilst he was a Registered Pharmacist, he: -

1. *Failed to undertake and/or to demonstrate that he undertook Continuous Professional Development (CPD) for the following periods: -*
  - (a) *2018/2019 e-Portfolio Review Cycle; and/or*
  - (b) *2019/2020 e-Portfolio Review Cycle; and/or*
  - (c) *2020/2021 e-Portfolio Review cycle.*
2. *Failed to respond to one or more requests from the Irish Institute of Pharmacy (IIOF) to submit his e-Portfolio Review, being a report on his CPD activities and/or compliance for the following periods:-*
  - (a) *2018/2019 e-Portfolio Review Cycle; and/or*
  - (b) *2019/2020 e-Portfolio Review Cycle; and/or*
  - (c) *2020/2021 e-Portfolio Review cycle.*
3. *Failed to engage and/or co-operate appropriately or at all with the PSI in respect of queries raised about his compliance with statutory CPD requirements, in particular he failed to respond to requests from the PSI to submit his e-Portfolio to the IIOF for the year 2018/2019 e-Portfolio Review Cycle.*
4. *As part of his application for his continued registration for the period 2019/2020, declared in the affirmative to the following CPD declarations in circumstances where those affirmative declarations were false and/or inaccurate and/or misleading:-*
  - “(a) I engaged with the Institute of Pharmacies (IIOF) in my undertaking and reporting of CPD activities as required under Parts 4 and 5 of the CPD Rules;*
  - (b) I undertake systematic, self-directed, need-based and outcomes focused, CPD based CPD, based on a process of continual learning and development with my professional practice as a pharmacist;*
  - (c) I regularly carry out a self-assessment of my learning needs having regard to the Core Competency Framework for Pharmacists, with a view to identifying learning activities appropriate to the needs of my professional practice;*
  - (d) I have created and actively maintain a learning profile as part of my e-Portfolio which details all of my CPD learning activities; and*
  - (e) I engage in such activities as are identified in my e-Portfolio and reflect on the impact of those activities having regard to the objectives of undertaking appropriate CPD.”*

It is further alleged in the Notice of Inquiry that, by reason of one or more of the Allegations and/or Sub-Allegations as set out at Allegations 1 and/or 2 and/or 3 and/or 4 above, taken individually and/or cumulatively and/or in combination, the Respondent is guilty of Professional Misconduct in that he acted in a manner that:-

- (i) is infamous or disgraceful in a professional respect; and/or
- (ii) involves moral turpitude, fraud or dishonesty of a nature or degree which bears on the carrying on of the profession of a pharmacist; and/or
- (iii) is in breach of Principle 5 and/or 6 of the Code of Conduct for Pharmacists.

As regards Allegation 1(a), 2(a) and 3 the Registrar maintains that this constitutes Professional Misconduct as constituting a breach of Principle 5 and 6 of the Code of Conduct for Pharmacists as existed prior to 20 October 2019 and can be found at Tab 15 of the Core Book. As regards Allegations 1(b)-(c), 2(b)-(c) and 4, it is alleged that these constitute Professional Misconduct being a breach of Principle 5 and 6 of the current Code of Conduct for Pharmacists effective as of 20 October 2019

It is further alleged that, by of one or more of the Allegations and/or Sub-Allegations as set out at 1 and/or 2 and/or 3 above, the Respondent contravened the 2007 Act (by reason of a contravention of the Statutory Instrument made under the Act) in that the Respondent acted in a manner that is in breach of Rules 8 and/or 10(2) and/or 11(1) of the PSI (Continuing Professional Development) Rules, 2015 (the 2015 Rules).

## 4. Evidence

The Committee heard from the following witnesses: -

1. Dr Catriona Bradley, IIOP (pages 44-68 of the Transcript 21 February 2023)
  - (a) Dr Bradley stated that her role, as Executive Director of the IIOP (and as outlined in SI 553/2015) is to oversee the implementation and quality assurance of Continuing Professional Development for pharmacists.
  - (b) Dr Bradley stated that the e-Portfolio is designed to give effect to the definition of CPD that is articulated in SI 553/2015 and that it defines CPD for pharmacists as needing to be systematic, self-directed, and needs based, outcome focused, a process of learning, focused on patients and improvements. Dr Bradley stated that the e-Portfolio provides a template for pharmacists to document their learning and facilitate their learning and identification of learning needs, as well as enabling them to satisfy their CPD obligations for the PSI under SI 553/2015 by enabling them to document it, present it and submit it in the electronic format. She stated that Registrants are called on to do so once in a 5-year period and that they can do so by taking the information that they have been using on an ongoing basis and based on the obligation on them to use the e-Portfolio to maintain their CPD records.

- (c) Dr Bradley stated that they are called on to document their CPD, firstly, by the PSI and then by the IOP and that the e-Portfolio platform gives Registrants a functionality that appears on the e-Portfolio that allows them to automatically upload the evidence that they would like the IOP to see, and the IOP evaluate that through both system based standards and peer review and then identify the feedback and that Registrants are given a number of opportunities to remediate that in a particular timeframe.
- (d) Dr Bradley stated that, there is a random sample of Registrants reviewed on an annual basis, which is selected by the PSI and that the IOP take the sample that is communicated from the PSI and engage with the Registrants as regards their CPD. Dr Bradley stated that if a Registrant does not engage with the IOP, the IOP cannot provide any assurance to the Registrar of the PSI and must simply say that the Registrant is not engaging. She stated that if it was a case that a Registrant engaged, but they had not met the standards, they are given a further opportunity for a year and/or a remediated interaction with the IOP before any communication goes to the PSI.
- (e) Dr Bradley stated that, if a Registrant had not met the standards of a particular year, they are automatically reviewed in the following year.
- (f) Dr Bradley confirmed that she sent the letter dated 19 May 2021 to the Registrar (page 29 of the Core Book) and proved its contents, which provided the statistical information relating to the e-Portfolio Review Year 2020/2021.
- (g) In relation to the Respondent, Dr Bradley confirmed the letter from her to Fieldfisher LLP dated 13 December 2021 (page 76 of the Core Book), which was in response to a request for correspondence or other documentation exchanged between the IOP and the Respondent in respect of e-Portfolio years 2018/19, 2019/20 and 2020/21.
- (h) In relation to the years 2018/19 of the e-Portfolio Review, Dr Bradley relied on the Appendix contained with her letter dated 13 December 2021 (at page 93 of the Core Book), which she stated were communications that were sent to all Registrants selected following receipt by the IOP as to who was to be included in the CPD review process that year.
- (i) She confirmed the correspondence from the IOP to the Respondent as contained at Tab 10(c) of the Core Book and that a letter was sent to the Respondent on 3 October 2018, which was entitled "*Initial Letter of Communication*", which set out what was to occur next in the e-Portfolio Review Process. This was followed up by further correspondence including communication on 17 October 2018, which set out the relevant dates as far as the Respondent and the review process was concerned. It noted that the Respondent was to receive an e-mail on 7 January

2019 and that he had until 27 January 2019 to submit an e-Portfolio extract. It stated that if he had met the standards required, he would receive feedback by the IOP Portal by 26<sup>th</sup> February 2019 and that that feedback must be implemented by 20 March 2019.

- (j) Dr Bradley gave evidence that the system is designed to help people rather than be punitive and has a standard red and green light system so that if Registrants had not uploaded sufficient evidence to demonstrate self-evaluation or systematic approach, or needs based approach they obtained feedback and, in the event of a red light, there is an opportunity to remediate on a more peer reviewed level. In her evidence, Dr Bradley went through the e-mail to the Respondent dated 10 December 2018, which was a further reminder and further confirmed there was a document furnished to the Respondent on 7 January 2019 entitled *"System-Driven Notification – Call to Submit"* and it requested the Respondent to submit his e-Portfolio extract for review. Thereafter, there was a document sent to the Respondent entitled *"System-Driven Notification – Final Call to Submit"* on 29 January 2019, which stated that there was a final submission deadline for the Respondent's e-Portfolio Review. It stated that if he did not submit his e-Portfolio Extract by the initial submission deadline, 27 January 2019, there would be one final opportunity to submit his extract via his IOP Portfolio Dashboard by 6:00pm on Wednesday 20 March 2019. Dr Bradley stated that then, on 1 May 2019, there was a *"System-Driven Notification – Final Outcome"*, sent to the Respondent which was stated to be an important IOP notification of non-engagement with the 2018/19 e-Portfolio Review. It notified the Respondent that the IOP records showed that his e-Portfolio extract was not received within the specified timeframe, and it set out the correspondence issued by both the PSI and the IOP to the Respondent. It stated that, as the Respondent did not submit an e-Portfolio extract for review, his outcome had been recorded as 'Non-Engagement' for the e-Portfolio Review 2018/19. Further, it stated that, as Executive Director of the IOP, Dr Bradley was now obliged to inform the Registrar of the PSI that the IOP is unable to provide assurance to the PSI that the Respondent's statutory obligation to demonstrate his CPD had been met.
- (k) In relation to the e-Portfolio Review 2019/20, Dr Bradley confirmed the correspondence from the IOP to the Respondent (see Tab 19(b) page 84 of the Core Book). Dr Bradley confirmed that there was a letter sent to the Respondent dated 9 October 2019 and a further e-mail sent to the Respondent on 23 October 2019 and 9 December 2019. On 6 January 2020, there was a *"System-Driven Notification – Call to Submit"* and then on 28 January 2019, there was a *"System-Driven Notification – Final Call to Submit"* sent to the Respondent. On 27 April 2020, there was a Final Outcome Document sent to the Respondent, which again communicated to him that he was a "Non-Engager" and that the IOP was obliged to communicate this to the PSI.



- (l) As regards the e-Portfolio Review 2020/21, the relevant documents were contained at Tab 10(a) of the Core Book (from page 77) and were confirmed by Dr Bradley. Dr Bradley confirmed in evidence that the Review began with a letter sent to the Respondent entitled "*Initial Letter of Communication*", dated 7 October 2020 and that there was further e-mail correspondence to the Respondent on 21 October 2020. There was a reminder e-mail to the Respondent on 7 December 2020 and there was a Call to Submit on 7 January 2021. Dr Bradley stated that, on 2 February 2021, there was a final Call to Submit sent to the Respondent and that a Final Outcome was communicated to the Respondent on 4 May 2021.
- (m) Dr Bradley confirmed that there was no record of any communication from the Respondent in response to the communication of the IOP contained at Tabs 10(a) – (c) of the Core Book. She also confirmed that, to her knowledge, there was no engagement by the Respondent with the e-Portfolio System. In this respect, Dr Bradley stated that the staff of the IOP looked back and Dr Bradley confirmed there was no apparent engagement in any format by the Respondent.
- (n) In response to the Committee, Dr Bradley confirmed that the Registrant had never engaged with the e-Portfolio System and so it was not just a case of him not engaging in the review process carried out by the IOP.

2. Ms Ciara Dooley (pages 68 – 76 of the Transcript 21 February 2023).

- (a) Ms Dooley confirmed that she was Acting Education Manager at the PSI at the relevant time. She confirmed the contents of her statements dated 21 February 2020 and 19 May 2022.
- (b) Ms Dooley confirmed that the correspondence from the PSI to the Respondent between June 2019 and January 2020, signed by Ms Damhniat Gaughan. Ms Dooley confirmed the letter to the Respondent dated 21 June 2019, as sent to his address in Portmarnock, referring to the PSI Mediation Procedure for Pharmacists – Non-Engagement in CPD Requirements. Ms. Dooley explained that the Policy that had been developed by the PSI was to have steps to deal with non-engagers, which included contacting them in the first instance.
- (c) Ms. Dooley confirmed that she attempted to ring the Respondent on 1 August 2019, which was followed by an e-mail of the same date. She stated that the Respondent did not respond to her calls. She confirmed that another letter was sent to the Respondent by Registered Post on 23 August 2019, and she confirmed that the PSI records show that the Respondent signed for the said letter. She confirmed the PSI did not receive any response from the Respondent to the correspondence of 23 August 2019.

- (d) Ms. Dooley confirmed that another letter was sent to the Respondent on 22 October 2019, again by Registered Post, and again there was no response from the Respondent to that letter.
  - (e) Ms. Dooley referred to a letter sent to the Respondent by the PSI on 6 December 2019 and an issue arose as to whether this was sent by Registered Post, so it was followed up by another letter to the Respondent on 13 January 2020 and the Respondent did not respond. Ms. Dooley confirmed that all of that related to the e-Portfolio cycle of 2018/19.
  - (f) Ms. Dooley confirmed that there were no steps taken to follow up with the Respondent in May 2020 because, at that stage, the Registrar had already made his decision to make a complaint about the e-Portfolio cycle 2018/19.
3. Evidence of Ms Emma Pierce (pages 76-85 of the Transcript dated 21 February 2023)
- (a) Ms. Pierce confirmed that she worked in the Qualification Recognition and Registration Area of the PSI, and she confirmed also that she was familiar with how registration works for pharmacists.
  - (b) Ms. Pierce confirmed the Respondent's Outline Continued Registration Acknowledgements for the years 2018-2021 as contained at Tabs 5(A)-(D) of the Booklet entitled "*Additional Booklet of Documentation* (the Additional Booklet).
  - (c) As regards the Outline Continued Registration Acknowledgement completed on 27 November 2019 as contained at Tab 5(B) of the Additional Booklet and the subject matter of Allegation 4 of the Notice of Inquiry, Ms. Pierce confirmed that the Respondent declared in the affirmative regarding the CPD declarations the subject of Allegations 4(a) –(e) inclusive.
  - (d) Notably, as regards the Online Continued Registration Acknowledgement completed by the Respondent on 25 November 2021, as contained at Tab 5(d) of the Additional Booklet, and in contrast to the declaration the subject of Allegation 4(e) of the Notice of Inquiry, the Respondent declared in the negative that he had engaged in such activities as are identified in his e-Portfolio and reflect on the impact of those activities having regard to the objectives of undertaking appropriate CPD.

## 5. Submissions

Following the evidence, the Registrar made submissions, which can be found at pages 86-103 of the Transcript dated 21 February 2023.

The Registrar set out the meaning of Professional Misconduct as provided for in the 2007 Act and the grounds upon which a complaint can be made to the Council as provided for by s.35(1) of the 2007 Act and identified that the Registrar was relying on s.35(1)(a) (being professional misconduct) and s.35(1)(f) (being a contravention of the 2007 Act or rules made by the Council under the said Act). The Registrar relied on the Codes of Conduct effective prior to 20 October 2019 and the Code of Conduct applicable thereafter, which were contained at Tabs 15 and 16 of the Core Book, and submitted the Code that the Registrar alleges was breached.

The Registrar submitted that insofar as the definition of Professional Misconduct means any act, omission or pattern of conduct that is infamous or disgraceful in a professional manner (notwithstanding that, if the same or like act, omission or pattern of conduct were committed by a member of another profession it would not be professional misconduct in respect of that profession), being the moral turpitude of fraud and dishonesty ground, it is being alleged that the Respondent's activities as detailed at Allegations 1, 2 and 3, combined with the declarations made at Allegations 4(a)-(e), amount to dishonesty so that Allegations 1, 2 and 3 involved dishonesty only insofar as they are combined with any findings in relation to Allegation 4.

As regards Allegations 1(a)-(c) of the Notice of Inquiry, and specifically the Allegation that the Respondent failed to undertake CPD for the e-Portfolio Review cycle 2018/19, 2019/20 and 2020/21, the Registrar relied upon rule 8 of the 2015 Rules and specifically rule 8(3) which provides that for the purpose of the 2015 Rules, every pharmacist shall on a regular basis carry out a self-assessment of his or her learning needs, having regard to the Core Competency Framework for Pharmacists with a view to identifying the learning activities appropriate to the needs of his or her professional practice. In addition, the Registrar relied on Rule 8(4), which provided that every pharmacist shall create and maintain a learning profile, as part of his or her e-Portfolio, which shall detail the learning activities identified pursuant to Rule 8(3) as well as learning identified and experienced in the course of his or her professional practice and any other learning that may be identified with a view to enhancing his or her professional practice. It was submitted by the Registrar that undertaking CPD includes and necessitates the requirements contained in Rules 8(3) and 8(4) of the 2015 Rules. Therefore, it is not only that a Registrant must attend the lectures or read the magazines or do the substantive CPD, but they also actually must comply with the 2015 Rules. Therefore, if a Registrant does not carry out what is required by the 2015 Rules, including Rules 8(3) and 8(4), (s)he is not undertaking CPD, as distinct from demonstrating CPD.

In addition, the Registrar relied on Rule 8(5) of the 2015 Rules, namely, that every pharmacist shall undertake in his or her CPD activities and engage in such activities as may have been identified in the learning profile referred to in Rule 8(4) and submitted that, therefore, the CPD that must be carried out by the Respondent must be the CPD that has been identified in the learning profile referred to in Rule 8(4), namely the creation and maintaining of a learning profile that is part of an e-Portfolio, which details learning activities pursuant to Rule 8(3). It was submitted on the part of the Registrar that, when taken together, Rules 8(3)-(5) of the 2015 Rules that a Registrant must carry out the CPD that is identified in his or her learning

profile that he or she is maintaining on the e-Portfolio and that what he or she maintains on the e-Portfolio must, in turn, come from the Self-Assessment that is carried out under Rule 8(3) of the 2015 Rules. It was submitted by the Registrar that it is impossible to divorce the undertaking of the substantive CPD from what is on the e-Portfolio and that they are symbiotically linked and that a Registrant cannot say that they are doing CPD without any reference at all to the e-Portfolio as Rule 8 of the 2015 Rules does not permit this.

## **6. Legal Assessor's Advice**

Following the evidence and the submissions of the Registrar, the Legal Assessor gave advice to the Committee, which can be found at pages 103-118 of the Transcript dated 21 February 2023, which addressed the following: -

- (a) The role of the Committee is to consider the Allegations and to review the evidence, and that is purely a matter for the Committee as to the weight to be given to the evidence.
- (b) The role of the Committee is to decide if the Allegations as contained within the Notice of Inquiry are proved as to fact beyond reasonable doubt and are proved, in the instance of this Inquiry, as to Professional Misconduct beyond reasonable doubt and/or a contravention of the Act only in relation to Allegations 1-3 beyond reasonable doubt.
- (c) The burden of proof is on the Registrar and that there is no obligation on the Registrar to disprove the Allegations and that no adverse inference should be drawn from the fact that he was not in attendance at the Inquiry. The standard of proof is a criminal standard, beyond reasonable doubt and he advised the Committee in relation to this standard of proof.
- (d) The role of the Legal Assessor and/or his relationship with the Committee and that the Committee is not bound by his or her advice but should give clear and cogent reasons if departing from that advice.
- (e) That once findings are made, the Committee should prepare a report for Council as provided by s.47 of the 2007 Act.
- (f) The identification of the Sanctions available to the Committee to recommend in the event of adverse findings against the Respondent and the principles that apply in recommending sanction.
- (g) The test that applies when deciding allegations of dishonesty and when recommending sanction in the event of findings of dishonesty.
- (h) The need to give reasons for any findings made against the Registrant, and any recommendations as to Sanction.

## **7. Committee's Decision**

### **Committee's Findings as to Fact in relation to Allegations 1(a), (b) and (c)**

#### **Allegation 1(a):**

The Committee is satisfied that this Allegation was proved as a matter of fact beyond reasonable doubt.

#### **Reasons: -**

The reasons for the Committee's finding that the Respondent failed to undertake and/or demonstrate that he undertook continuous professional development for the relevant period is because the Committee accepted the uncontroverted evidence of Dr Bradley as set out above that the Respondent failed to submit a report of his CPD despite requests. Consequently, the Respondent is in breach of Rule 11(1) of 2015 Rules and failed to undertake CPD for the relevant period, and failed to demonstrate that he undertook CPD and in accordance with and as required by the 2015 Rules.

#### **Allegation 1(b)**

The Committee is satisfied that this Allegation was proved as a matter of fact beyond reasonable doubt.

#### **Reasons: -**

The reason for the Committee's finding that the Respondent failed to undertake and/or demonstrate that he undertook continuous professional development for the relevant period is because the Committee accepted the uncontroverted evidence of Dr Bradley as set out above that the Respondent failed to submit a report of his CPD despite requests. Consequently, the Respondent is in breach of Rule 11(1) of 2015 Rules and failed to undertake CPD for the relevant period, and failed to demonstrate that he undertook CPD and so did not undertake CPD as provided for, in accordance with and as required by the 2015 Rules.

#### **Allegation 1(c):**

The Committee is satisfied that this Allegation was proved as a matter of fact beyond reasonable doubt.

#### **Reasons: -**

The reason for the Committee's finding that the Respondent failed to undertake and/or demonstrate that he undertook continuous professional development for the relevant period is because the Committee accepted the uncontroverted evidence of Dr Bradley as set out above that the Respondent failed to submit a report of his CPD despite requests. Consequently, the Respondent is in breach of Rule 11(1) of 2015 Rules and failed to undertake CPD for the relevant period, and failed to demonstrate that he undertook CPD and so did not undertake CPD as provided for, in accordance with and as required by the 2015 Rules.

### **Committee's Findings as to Professional Misconduct and Contravention of the 2007 Act or Rules made under the Act in relation to Allegations 1(a), (b) and (c)**

1. The Committee is satisfied beyond reasonable doubt that Allegations 1(a), (b) and (c), proved individually but taken in combination, constitute professional misconduct for the following reasons:-

- (a) Allegations 1(a) 1(b) and 1(c), each taken individually and in combination with each of the findings of fact in relation to Allegations 4(a)-(e) constitutes professional misconduct as being conduct that is infamous or disgraceful in a professional respect and/or involving moral turpitude, fraud or dishonesty of a nature or degree which bears on the carrying on of the profession of a pharmacist. On an objective assessment of the facts, the Respondent knew when completing his continued registration form that he had not engaged with the IOP as regards his undertaking and reporting of CPD activities as required under Parts 4 and 5 of the CPD Rules so that the findings in combination constitute conduct which is infamous and disgraceful and which constitutes fraud and dishonesty.
- (b) Allegations 1(a), (b) and (c) each individually constitute professional misconduct as they each constitute a breach of the Code of Conduct for Registered Pharmacists. In respect of the findings in relation to Allegation 1(a), these are covered by the old code effective and in place until 20 October 2019. The Committee finds beyond reasonable doubt that the finding of fact in relation to Allegation 1(a) constitutes a breach of Principle 5, namely that a pharmacist must maintain a level of competence sufficient to provide his professional services effectively and efficiently such that a pharmacist should undertake regular reviews, audits and risk assessments both to improve quality of service and to inform learning requirements and possible deficits and his failure to demonstrate that he undertook continuous professional development for the relevant period is a breach of the said principle. The Committee also finds, beyond reasonable doubt, that the Respondent is guilty of professional misconduct in relation to Allegation 1(a) in that he is in breach of the Principle 6 of the said Code, namely:-

*A pharmacist must be aware of his obligations under this Code and should not do anything in the course of practicing as a pharmacist, or permit another person to do anything on his behalf, which constitutes a breach of this Code or impairs or compromises his ability to observe the Code”, which includes “Ensure active participation and interaction with the Regulator”, which the Respondent failed to do.*

In relation to both Allegations 1(b) and 1(c), proved as to fact, the Committee is satisfied beyond reasonable doubt that these, individually, constitute a breach of Principle 5 of the Current Code in that the Respondent has failed to (a) co-operate with the legal review CPD process in relation to CPD and (b) has abused his position as a regulated professional. The Committee is also satisfied beyond reasonable doubt that each of the findings in relation to Allegations 1(b) and (c), individually, constitute a breach of principle 6 of the Current Code as being a failure to maintain competence by failing to comply with CPD requirements.

2. The Committee is satisfied beyond reasonable doubt that the Respondent contravened the 2007 Act, or a Statutory Instrument made thereunder by reason of Allegations 1(a), (b) and (c), as proved, each individually, the Respondent was in breach of Rules 8 and 10(2) of the 2015 Rules. The Committee is satisfied beyond reasonable doubt that Allegations 1(a), (b) and (c), as proved, each individually, constitute a breach of Rule 11(1) of the 2015 Rules as the Respondent failed to submit a report on his CPD activities, at the request of the Executive Director to the Institute.

### **Committee's Findings as to Fact in relation to Allegations 2(a), (b) and (c)**

#### **Allegation 2(a)**

This Allegation is proved as a matter of fact beyond reasonable doubt.

#### **Reasons:**

The Committee considered and accepted the evidence of Dr Bradley as set out above, which was uncontroverted.

#### **Allegation 2(b)**

This Allegation is proved as a matter of fact beyond reasonable doubt.

#### **Reasons:**

The Committee considered and accepted the evidence of Dr Bradley as set out above, which was uncontroverted.

#### **Allegation 2(c)**

This Allegation is proved as a matter of fact beyond reasonable doubt.

#### **Reasons:**

The Committee considered and accepted the evidence of Dr Bradley as set out above, which was uncontroverted.

### **Committee's Findings as to Professional Misconduct and Contravention of the 2007 Act or Rules made under the Act in relation to Allegations 2(a), (b) and (c)**

1. The Committee is satisfied beyond reasonable doubt that Allegations 2(a), (b) and (c), proved individually but taken in combination, constitute professional misconduct for the following reasons:-
  - (a) Allegations 2(a) (b) and (c), as proved, each taken individually and in combination with each of the findings of fact in relation to Allegations 4(a)-(e) constitutes professional misconduct as being conduct that is infamous or disgraceful in a professional respect and/or involving moral turpitude, fraud or dishonesty of a nature or degree which bears on the carrying on of the profession of a pharmacist. On an objective assessment of the facts, the Respondent knew when completing his continued registration form that he had failed to respond to one or more requests from the IIOP to submit his ePortfolio Review for the annual periods so

that the findings in combination constitute conduct which is infamous and disgraceful and which constitutes fraud and dishonesty.

- (b) Allegations 2(a), (b) and (c), as proved, each individually constitute professional misconduct as they each constitute a breach of the Code of Conduct for Registered Pharmacists. In respect of the findings in relation to Allegation 2(a), these are covered by the old code effective and in place until 20 October 2019. The Committee finds beyond reasonable doubt that the finding of fact in relation to Allegation 2(a) constitutes a breach of Principle 5, namely that a pharmacist must maintain a level of competence sufficient to provide his professional services effectively and efficiently such that a pharmacist should undertake regular reviews, audits and risk assessments both to improve quality of service and to inform learning requirements and possible deficits and his failure to demonstrate that he undertook continuous professional development for the relevant period is a breach of the said principle. The Committee also finds, beyond reasonable doubt, that the Respondent is guilty of professional misconduct in relation to Allegation 2(a) in that he is in breach of the Principle 6 of the said Code, namely:-

*A pharmacist must be aware of his obligations under this Code and should not do anything in the course of practicing as a pharmacist, or permit another person to do anything on his behalf, which constitutes a breach of this Code or impairs or compromises his ability to observe the Code”, which includes “Ensure active participation and interaction with the Regulator”, which the Respondent failed to do.*

In relation to both Allegations 2(b) and **2(c)**, proved as to fact, the Committee is satisfied beyond reasonable doubt that these, individually, constitute a breach of Principle 5 of the Current Code in that the Respondent has failed to (a) co-operate with the legal review CPD process in relation to CPD and (b) has abused his position as a regulated professional. The Committee is also satisfied beyond reasonable doubt that each of the findings in relation to Allegations 2(b) and (c), each individually constitute a breach of principle 6 of the Current Code as being a failure to maintain competence and by failing to comply with CPD requirements.

2. The Committee is satisfied beyond reasonable doubt that the Respondent contravened the 2007 Act and/or a statutory instrument made thereunder. By reason of Allegations 2(a), (b) and (c), as proved, each individually, the Respondent was in breach of Rules 8 and 10(2) of the 2015 Rules. The Committee is satisfied beyond reasonable doubt that Allegations 2(a), (b) and (c), as proved, each individually, constitute a breach of Rule 11(1) of the 2015 Rules as the Respondent failed to submit a report on his CPD activities, at the request of the Executive Director to the Institute.

### **Committee’s Findings as to Fact in relation to Allegation 3**

#### **Allegation 3**

This Allegation was proved as a matter of fact beyond reasonable doubt.



**Reasons:-**

The Committee considered and accepted the uncontroverted evidence of Ms Ciara Dooley as set out above.

**Committee's Findings as to Professional Misconduct and Contravention of the 2007 Act or Rules made under the Act in relation to Allegation 3**

1. The Committee is satisfied beyond reasonable doubt that Allegations 3, proved as to fact, constitutes professional misconduct for the following reasons:-

- (a) Allegation 3, individually, constitutes professional misconduct insofar as it constitutes a breach of the Code of Conduct for Registered Pharmacists. Allegation 3 is covered by the old code effective and in place until 20 October 2019. The Committee find beyond reasonable doubt that the finding of fact in relation to Allegation 3 constitutes a breach of Principle 5, namely that a pharmacist must maintain a level of competence sufficient to provide his or her professional services effectively and efficiently such that a pharmacist should undertake regular reviews, audits and risk assessments both to improve quality of service and to inform learning requirements and possible deficits and his failure to demonstrate that he undertook continuous professional development for the relevant period is a breach of the said principle. The Committee also finds beyond reasonable doubt, that the Respondent is guilty of professional misconduct in relation to Allegation 3 in that he is in breach of Principle 6 of the said Code, namely: -

*A pharmacist must be aware of his obligations under this Code and should not do anything in the course of practicing as a pharmacist, or permit another person to do anything on his behalf, which constitutes a breach of this Code or impairs or compromises his ability to observe the Code”, which includes “Ensure active participation and interaction with the Regulator”.*

2. The Committee is not satisfied beyond reasonable doubt that the findings in relation to Allegation 3 constitutes a contravention of the Act by reason of the breach of statutory instrument made under the Act by breach of Rules 8, 10(2) and/or 11(1) of the 2015 Rules as the said rules require engagement with the IIOP.

**Allegation 4(a)**

This Allegation was proved as a matter of fact beyond reasonable doubt.

**Reasons:-**

The Respondent completed the Continued Registration Form for the period 2019/2020 on 27 November 2019, which was after the ePortfolio Review Cycle period for 2018/2019. It is clear from the Committee's findings in relation to Allegations 1(a), 2(a) and/or 3 that, for the 2018/2019 ePortfolio Review Cycle, the Respondent had not undertaken and/or demonstrated that he undertook CPD for that period and he had failed to respond to one or more requests from the IIOP to submit his ePortfolio Review, being a report on his CPD

activities and/or compliance. In fact, it was clear from Dr Bradley's evidence, uncontroverted, that the Respondent had failed to engage at all with IOP regarding the 2018/2019 review period despite many requests. Further, the Committee accept the uncontroverted evidence of Ms Pierce regarding the Respondent's completing and submitting his continued registration application in terms of paragraph 4(a)-(e). The declaration the subject of Allegation 4(a), that he engaged with the IOP in his undertaking and reporting of CPD activities as required under Parts 4 and 5 of the 2015 Rules, was therefore false, inaccurate and misleading.

#### **Allegation 4(b)**

This Allegation was proved as a matter of fact beyond reasonable doubt.

##### **Reasons:-**

The Respondent completed the Continued Registration Form for the period 2019/2020 on 27 November 2019, which was after the ePortfolio Review Cycle period for 2018/2019. It is clear from the Committee's findings in relation to Allegations 1(a), 2(a) and/or 3 that, for the 2018/2019 ePortfolio Review Cycle, the Respondent had not demonstrated that he undertook continuous professional development for that period and he had failed to respond to one or more requests from the IOP to submit his ePortfolio Review, being a report on his CPD activities and/or compliance. In fact, it was clear from Dr Bradley's evidence, uncontroverted, that the Respondent had failed to engage at all with IOP regarding the 2018/2019 review period despite many requests. Further, the Committee accept the uncontroverted evidence of Ms Pierce regarding the Respondent's completing and submitting his continued registration application in terms of paragraph 4(a)-(e). The declaration the subject of Allegation 4(b) that he had undertaken systematic, self-directed, need based and outcomes focused CPD based on a process of continual learning and development with his professional practice as a pharmacist was false, inaccurate and misleading.

#### **Allegation 4(c)**

This Allegation was proved as a matter of fact beyond reasonable doubt.

##### **Reasons:-**

The Respondent completed the Continued Registration Form for the period 2019/2020 on 27 November 2019, which was after the ePortfolio Review Cycle period for 2018/2019. It is clear from the Committee's findings in relation to Allegations 1(a), 2(a) and/or 3 that, for the 2018/2019 ePortfolio Review Cycle, the Respondent had not demonstrated that he undertook continuous professional development for that period and he had failed to respond to one or more requests from the IOP to submit his ePortfolio Review, being a report on his CPD activities and/or compliance. In fact, it was clear from Dr Bradley's evidence, uncontroverted, that the Respondent had failed to engage at all with IOP regarding the 2018/2019 review period despite many requests. Further, the Committee accept the uncontroverted evidence of Ms Pierce regarding the Respondent's completing and submitting his continued registration application in terms of paragraph 4(a)-(e). The declaration the subject of Allegation 4(c) that he regularly carry out self-assessment of his learning needs having regard to the Core Competency Framework for Pharmacists with a view to identifying

learning activities appropriate to the needs of his professional practice was false, inaccurate and misleading.

#### **Allegation 4(d)**

This Allegation was proved as a matter of fact beyond reasonable doubt.

#### **Reasons:-**

The Respondent completed the Continued Registration Form for the period 2019/2020 on 27 November 2019, which was after the ePortfolio Review Cycle period for 2018/2019. It is clear from the Committee's findings in relation to Allegations 1(a), 2(a) and/or 3 that, for the 2018/2019 ePortfolio Review Cycle, the Respondent had not demonstrated that he undertook continuous professional development for that period and he had failed to respond to one or more requests from the IOP to submit his ePortfolio Review, being a report on his CPD activities and/or compliance. In fact, it was clear from Dr Bradley's evidence, uncontroverted, that the Respondent had failed to engage at all with IOP regarding the 2018/2019 review period despite many requests. Further, the Committee accept the uncontroverted evidence of Ms Pierce regarding the Respondent's completing and submitting his continued registration application in terms of paragraph 4(a)-(e). The declaration the subject of Allegation 4(d) that he had created and actively maintained a learning profile as part of his e-Portfolio which detailed all of his CPD learning activities was false, inaccurate and misleading.

#### **Allegation 4(e)**

This Allegation was proved as a matter of fact beyond reasonable doubt.

#### **Reason**

The Respondent completed the Continued Registration Form for the period 2019/2020 on 27 November 2019, which was after the ePortfolio Review Cycle period for 2018/2019. It is clear from the Committee's findings in relation to Allegations 1(a), 2(a) and/or 3 that, for the 2018/2019 ePortfolio Review Cycle, the Respondent had not demonstrated that he undertook continuous professional development for that period and he had failed to respond to one or more requests from the IOP to submit his ePortfolio Review, being a report on his CPD activities and/or compliance. In fact, it was clear from Dr Bradley's evidence, uncontroverted, that the Respondent had failed to engage at all with IOP regarding the 2018/2019 review period despite many requests. Further, the Committee accept the uncontroverted evidence of Ms Pierce regarding the Respondent's completing and submitting his continued registration application in terms of paragraph 4(a)-(e). The declaration the subject of Allegation 4(e) that he engaged in such activities as are identified in his ePortfolio and reflected on the impact of those activities having regard to the objectives of undertaking appropriate CPD was false, inaccurate and misleading.

#### **Committee's Findings as to Professional Misconduct and Contravention of the 2007 Act or Rules made under the Act in relation to Allegation 4(a)-(e)**

1. The Committee is satisfied beyond reasonable doubt that Allegations 4(a)-(e), as proved, each individually, constitutes professional misconduct for the following reasons:-
  - (a) It constitutes conduct that is infamous or disgraceful in a professional respect and involving moral turpitude, fraud or dishonesty of a nature or degree which bears on the carrying on of the profession of a pharmacist. The reason for this is that the Committee has found that the Respondent failed to engage with the Institute of Pharmacy and/or his Regulator in his undertaking and reporting of CPD activities for the 2018/2019 ePortfolio Cycle as required under Parts 4 and 5 of the 2015 Rules. Therefore, in declaring as he did in terms of each of Allegations 4(a)-(e) when completing his application for continued registration, the Committee is satisfied beyond reasonable doubt, and applying an objective test (in the context in which the Respondent found himself), acted with moral turpitude, fraudulently and dishonestly as it was clear to him from his failure to engage that his declared position as regards CPD was wrong and he acted to mislead his Regulator that he had complied with CPD in compliance with the 2015 Rules. For the reasons set out above, the Committee is also satisfied that the finding in relation to Allegation 4(a)-(e), as proved, each individually, constitute professional misconduct when taken together with each of the findings in relation to Allegation 1(a) and, separately, Allegation 2(a) for the reasons set out above.
  - (b) Allegations 4(a)-(e) was declared on 27 November 2019. The Committee is satisfied beyond reasonable doubt that Allegations 4(a)-(e), each separately, as proved, constitutes professional misconduct insofar as being a breach of Principle 5 of the Code, effective from 20 October 2019. Principle 5 provides that a pharmacist must show leadership in their role as a pharmacist, including by promoting and strengthening a culture of quality and safety, acting as a role model for the safe supply of medicines including proactively identifying potential areas of risk in his practice and taking steps to mitigate these risks and must cooperate with any legal or disciplinary processes and, in providing the information the subject of each of the allegations 4(a)-(e), the Respondent did not adhere to this principle. The Committee is satisfied beyond reasonable doubt that Allegations 4(a)-(e), each separately, as proved, constitutes a breach of Principle 6 of the said Code, which places a responsibility on the Respondent to identify areas where he needs to update his knowledge and skills and that he must take action to address these and to document this and apply learning to his practice and that he should promote and encourage a culture of learning, training and development. By declaring as found, when this was not correct, he was in breach of these principles.

## **8. Committee Recommendations on Sanction (if any)**

The Committee recommends the following sanction to Council: -

1. Suspension of the Respondent's registration for a period of 3 months from the date that it is effective pursuant to s.48(1)(b)(iv) of the Pharmacy Act 2007 (as amended) (the 2007 Act).
2. The attachment of the conditions set out at Appendix I to the registration of the Respondent pursuant to s.48(1)(b)(ii) of the 2007 Act.

**Reasons for recommendation as to Sanction: -**

1. The Committee has made findings in relation to Allegations 1(a)-(c) and 2(a)-(c), namely that the Respondent failed to undertake and/or demonstrate that he undertook CPD for a period of three consecutive years and that he failed to engage with the IOP. Further, it was proved that he failed to adequately engage with his regulator as regards his CPD for the 2018-2019 e-Portfolio cycle. These findings represent a complete failure by the Respondent, over a period of three years, to engage with CPD as required by the 2015 Rules.
2. Further, Allegations 4(a)-(e), as proved, demonstrate that the Respondent was engaged in dishonest and fraudulent conduct, which was repetitive insofar as he made numerous declarations to his Regulator that were misleading as to the true position regarding his engagement with CPD.
3. In recommending the sanction of Suspension and the imposition of conditions, the Committee has considered the entire of the PSI Sanction Guidance (March 2021). The Committee consider the sanction of Suspension necessary, appropriate and proportionate in the following circumstances: -
  - (a) The findings relating to Allegations 1-3 constitute conscious failures regarding CPD and regarding engagement with the IOP and the regulator in relation to his CPD.
  - (b) The findings the subject of Allegations 4(a)-(e) constitute conduct that was dishonest and/or fraudulent, which is particularly serious as it undermines trust in the profession, even where no patient harm has occurred. Registrants have a duty of candour to their Regulator and the wider public.
  - (c) The findings relating to Allegations 1-2 constitute serious departures from the 2007 Act and/or the statutory instruments made thereunder.
4. The Committee consider the sanction of Suspension necessary, appropriate and proportionate: -

- (a) For the protection of the public in circumstances where the findings go to a statutory imposed scheme of CPD to be undertaken by all pharmacists for the protection of the public and where the Respondent failed to undertake CPD and/or failed to engage and/or adequately engage with the IOP and his Regulator as regards CPD.
- (b) The Sanction of suspension (which has serious consequences for the Respondent) and the imposition of conditions highlights to the Respondent the serious view taken of the extent and nature of the misconduct as found to deter him from being likely to engage in similar or like conduct if and when he resumes practice. In this respect, the Committee has no comfort that the Respondent has or has shown any insight regarding his failures the subject matter of the Committee's findings. For this reason, the Committee has concerns that, in the absence of the sanction recommended, there is a risk that the Respondent will repeat the misconduct found.
- (c) The Committee is satisfied that the Respondent's failure to show insight means that the recommended sanctions are appropriate and proportionate. There is no expression of any understanding or remorse by the Registrant and despite the ongoing correspondence, he has failed to give any assurance that he will seek to regulate his shortcomings regarding CPD, going forward or otherwise. In the Committee's view, this increases the risk that the Respondent will remain in default into the future, and this goes to public safety.
- (d) The Sanction of Suspension and the imposition of conditions points to the gravity of the misconduct found, which relates to CPD and concerns dishonesty, to other members of the profession thereby upholding the reputation of the profession, and maintaining public confidence in the profession, and the integrity of the regulatory process, and upholding professional standards.
- (e) The Sanction of Suspension and the imposition of conditions is proportionate as it affords the Respondent as much leniency as is appropriate. In this respect, the sanction of suspension and the imposition of conditions relates to the findings made and is aimed at correcting and deterring breaches of standards relating to pharmacists so as to serve the public. It weighs up the interests of the public and the interests of the Respondent including his entitlement to earn his livelihood as a pharmacist. The Committee considered each of the lesser sanctions (individually and in combination) provided for at S.48 of the 2007 Act but did not consider that such sanctions were appropriate, sufficient and/or proportionate.

5. In recommending suspension and the imposition of conditions, the Committee has considered the limited mitigating circumstances being that the Registrant has had a blemish free career to date.
6. Despite these mitigating circumstances, the Committee consider suspension and the imposition of conditions necessary due to the nature of the misconduct and the extent and repetitive nature of the behaviour which had a dishonest and fraudulent element. The sanctions are appropriate due to the failure of the Registrant to show any or any proper insight. Further, the recommended Sanction is necessary especially as it points to the gravity of the professional misconduct to other members of the profession thereby upholding the reputation of the profession and maintaining public confidence in the profession and the regulatory process and declaring and/or upholding professional standards.

#### **APPENDIX**

That prior to resuming practice following the suspension (but not a condition of resuming practice), the Respondent undertake, and complete continuing professional development required by and in compliance with the PSI (Continued Professional Development) Rules 2015 for the current ePortfolio Review Cycle period immediately prior to the expiration date of his suspension.

**SIGNED:**



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**NAME:**

**Dermott Jewell, Chairperson**

**DATE:**

**14 August 2023**