

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 Roger Cracknell (the Respondent)

Registered address:



Registration Number: 10682

Complaint Reference: 620.2021

Date of Inquiry: 23 November 2022 & 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 Respondent: Unrepresented

Registrant in attendance: No

Witnesses (if applicable): Ms Ciara Dooley, PSI
Mr John Bryan, PSI
Dr Catriona Bradley, IIOP

Other Attendees: Niamh Kelly-Leahy, D. O'Malley Stenography

In Attendance from the PSI: Ms Avi McCabe, 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 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 Continuing Professional Development (CPD) ePortfolio Review Process and his CPD 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 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 Section 35(1)(a) and 35(1)(f) of the 2007 Act.

The Allegations 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 IOP) to submit his ePortfolio Review for the said years. It is further alleged that the Respondent failed to engage and/or co-operate with the PSI appropriately or at all regarding his compliance with CPD for the year 2018/19 and/or that he failed to respond to a request from the Pharmaceutical Society of Ireland (PSI) to submit his ePortfolio Review to the IOP for that period. 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 or 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 Respondent had been served but was not in attendance and was not legally represented. The Committee decided to proceed with the hearing and its reasoned decision can be found in the transcript of the hearing at pages 37-39.

3. Allegations

The allegations made against the Respondent by way of Notice of Inquiry dated 12 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 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 Allegations 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 14 of the Core Book. As regards Allegations 1(b), 1(c), 2(b) and 2(c) and 4(a)-(e) 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 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 Act (by reason of a contravention of a Statutory Instrument made under the Act) in that he 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. Mr John Bryan (pages 43-49 of the Transcript)
 - (a) Mr Bryan gave evidence that he was the head of Community Pharmacy Assurance within the PSI and his functions included the investigation, inspections, preliminary proceedings, matters of registration of retail pharmacy businesses, pharmacists and pharmaceutical assistants.
 - (b) Mr Bryan confirmed the Respondent's registration details as contained at Tab 2 of the Core Book.
 - (c) Mr Bryan gave evidence regarding the document entitled Online Continued Registration Acknowledgement (the Acknowledgment) (Exhibit B). He confirmed that the Acknowledgment is completed on-line by a person who is completing continued registration and they confirm statements by placing a tick on the document. The Acknowledgment reflected the Respondent's answers to the questions and, based on these answers, his registration continued for the following year. Mr Bryan confirmed that the Respondent gave the answers the subject of the Allegations 4(a)-(e).
2. Dr Catriona Bradley (pages 67-83 of the Transcript)
 - (a) Dr Bradley gave evidence that she was Executive Director of the IIOP.
 - (b) As regards the ePortfolio platform, Dr Bradley stated that all pharmacists have access to their ePortfolio and that is how they meet the requirements of the legislation in recording their CPD.

- (c) Dr Bradley stated that the standards are set out annually by a peer group. It is a systematic, needs-based, outcomes focused, continuous learning, and these form part of a red/green system. Registrants upload the records that they want to submit they get feedback as to whether they are meeting the standards, and what needs to be done for them to fulfil their obligations.
- (d) Dr Bradley stated that the IOP is requested to undertake an ePortfolio Review of a random selection of the Register chosen by the PSI and the IOP informs those individuals that they will be engaging in an ePortfolio review. Those selected receive a signal on their ePortfolio Review that indicates to them that they are now involved in a review and their obligation to provide the IOP with evidence that they have met the standards.
- (e) Participants in the ePortfolio Review are informed that they are part of the review and they are told of what is coming up and the applicable time period for compliance. They are told when the window is open and when to upload their documents and, if they do not engage in the first instance, they are informed that they are going to miss the first review but that they can engage in the second review. The second review allows participants to remediate, self-remediate and to make their submissions.
- (f) Dr Bradley stated that somebody identified as a non-engager for the first year will be subject to the process again the following year.
- (g) Dr Bradley confirmed her correspondence to Fieldfisher contained at Tab 9 of the Core Book, which included Appendix I relating to the 2020-2021 review, Appendix 2 relating to the 2019-2020 review and Appendix 3 regarding the 2018-2019 review.
- (h) Regarding the 2018-2019 review, Dr Bradley confirmed the correspondence with the Respondent, which included generic-type letters and letters personal to him. This began with a letter dated 3 October 2018 informing him that he had been randomly selected for inclusion in the ePortfolio review and that all communication will be by email and so it is important that the email held by the IOP is current and that it is his responsibility to ensure that the email listed in his IOP profile is correct and how he can manage and update the profile. He was informed that the IOP would send him an email, which would provide important information on the ePortfolio Review including the specific dates in January that he could submit his ePortfolio extract for review. By subsequent correspondence, the Respondent was told of the key dates for the review and that he had until 27 January 2019 to submit his ePortfolio extract. He was warned that if his submission did not meet the standards, he would receive feedback on 25 February 2019 and that the feedback must be implemented by 20 March 2019. He was told that the process would be complete in early May 2019. Dr Bradley gave evidence that reminders were sent

regarding the timelines and inviting the Respondent to submit his ePortfolio extract for review.

- (i) Dr Bradley confirmed that the Respondent received notification of the review by correspondence from the IOP dated 3 October 2018, 17 October 2018, 10 December 2018, 7 January 2019 and 29 January 2019 and that the Respondent was told that, as he did not submit an ePortfolio extract for review, his outcome had been recorded as “Non-engagement” for the 2018/19 Review.
- (j) Dr Bradley confirmed that there was no response from the Respondent. Dr Bradley confirmed that the Respondent did not provide any evidence to the IOP of engagement with the ePortfolio Review process or the completion of CPD.
- (k) As regards the year 2019/2020, Dr Bradley stated that the initial letter was sent on 9 October 2019 and the Respondent was told of key dates by communication dated 23 October 2019. The Respondent was written to on 9 December 2019 informing him of the fact that the window was open as of 6 January 2020 with a final call to submit on 26 January 2020. The Respondent was informed of his failure to submit by communication dated 27 April 2020. Again, Dr Bradley stated that to her knowledge no response was received from the Respondent to the said communications. Dr Bradley confirmed that the Respondent did not provide any evidence to the IOP of engagement with the ePortfolio Review process or the completion of CPD.
- (l) As regards the year 2021, Dr Bradley stated that the initial letter was sent on 7 October 2020 to inform the Respondent that he was selected for an ePortfolio review and the Respondent was again written to on 21 October 2020 and 7 December 2020 when he was told that the window was going to open and a final call was issued to him on 2 February 2021, indicating that he had not availed of his first submission deadline 31 January 2021 and that a final opportunity was open to submit by 14 March 2021. The respondent was told of his failure to respond by communication dated 4 May 2021 and he was given the status of a non-Engager. The Respondent did not respond to the said correspondence to Dr Bradley’s knowledge. Dr Bradley confirmed that the Respondent did not provide any evidence to the IOP of engagement with the ePortfolio Review process or the completion of CPD.

3. Ms Ciara Dooley (pages 84-95 of the Transcript)

- (a) Ms Dooley informed the Committee that she held the position of Regulatory Risk Coordinator in the PSI and that in the Summer of 2019, she held the position of Education Support Officer.

- (b) Ms Dooley confirmed the contents of her Statement at Tab 4B of the Core Book dated 21 September 2020. She confirmed that she received correspondence from the IOP in May 2019 regarding persons who did not engage and that the PSI would then engage with those persons. In this respect, Ms Dooley stated that the PSI corresponded with the Respondent by letter dated 21 June 2019 and that there was no response from him. The Respondent did, however, respond to a letter dated 1 August 2019 and Ms Dooley spoke to him and he said that he had not received the letter and she informed him that it related to failure to comply with CPD and she agreed to send the letter again. She stated that she sent the letter to him (as contained at page 21 of the Core Book) but that he did not respond.
- (c) Ms Dooley stated that another letter was sent to the Respondent on 23 August 2019 (as contained at page 23 and 24 of the Core Book). The Respondent did not respond to that letter.
- (d) A final letter was sent to the Respondent on 22 October 2019 requesting that the Respondent reply by 30 October 2019 (as contained at page 26 of the Core Book). Following this letter, the Respondent telephoned the PSI on two occasions to speak to Ms Dooley. She was not there on either occasion and he said that he would call back. She attempted to telephone him also but she was unable to speak to him or to leave a message. Ms Dooley stated that she has not spoken to the Respondent since her telephone call with him on 1 August 2019.
- (e) Ms Dooley also confirmed her Statement dated 21 February 2020, contained at Tab 10 of the Core Book. Ms Dooley confirmed that the PSI engaged with persons who has not engaged with the IOP and that the Respondent had been sent more correspondence than was normal.
- (f) Ms Dooley confirmed the communications to the Respondent by reference to the document at Tab 4C of the Core Book (contained at page 18).
- (g) Ms Dooley confirmed that she did not engage further with the Respondent in circumstances where a decision had been made on 28 January 2020 to submit a complaint regarding the Respondent. Ms Dooley confirmed that she did not contact the Respondent during 2020 in relation to the 2019/20 or the 2020/21 review.

5. Submissions

Following the evidence, the Registrar made submissions, which can be found at pages 95-114 of the Transcript.

The Registrar relied on the allegations and submitted that each was supported by the evidence heard by the Committee. The Registrar set out the meaning of professional misconduct as provided for in the Pharmacy Act 2007 (as amended) 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 2015 Rules and alleged a breach of Rules 8, 10(2) and 11(1).

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 114-123 of the Transcript, which addressed the following: -

- (a) The burden of proving the allegations as to fact and as to Professional Misconduct and/or a contravention of the 2007 Act or the rules made thereunder, rests with the Registrar.
- (b) The Allegations must be proved as to fact and as to Professional Misconduct and/or a contravention of the 2007 Act or the rules made thereunder, by the Registrar beyond reasonable doubt and advised the Committee regarding this onus.
- (c) No adverse inference should be drawn by reason of the Respondent not being present at the hearing and/or not giving evidence.
- (d) Whether the allegations as to fact and as to Professional Misconduct and/or a contravention of the 2007 Act or the rules made thereunder, are proved beyond reasonable doubt on the basis of the evidence is a matter for the Committee.
- (e) The role of the Legal Assessor and his relationship with the Committee and that the Committee is not bound by his advice but should give clear and cogent reasons if departing from that advice.
- (f) That once findings are made, the Committee should prepare a report for Council as provided by s.47 of the 2007 Act.
- (g) It is common for the Committee to make recommendations as to Sanction and the Legal Assessor advised the Committee as to the different sanctions available in the event of adverse findings and the principles that apply in recommending sanction.
- (h) The test that applies when deciding allegations of dishonesty and when recommending sanction in the event of findings of dishonesty.

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. Further, the Committee rely on the Respondent's email dated 22 November 2022 where he confirms that he had failed to carry out ePortfolio in accordance with 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. Further, the Committee rely on the Respondent's email dated 22 November 2022 where he confirms that he had failed to carry out ePortfolio in accordance with 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.

Further, the Committee rely on the Respondent's email dated 22 November 2022 where he confirms that he had failed to carry out ePortfolio in accordance with 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 and 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 IOP 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 practising 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 practising 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 breach of Rules 8, 10(2) and/or 11(1) of the 2015 Rules as the said rules require engagement with the IIOP.

Committee's Findings as to Fact in relation to Allegation 4(a)

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 31 October 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 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 rely on the uncontroverted evidence of Mr John Bryan that the Respondent completed and submitted his continued registration application in terms of Allegations 4(a)-(e). In the circumstances, this declaration was false, inaccurate and misleading. The requirement the subject of Allegation 4(a), that he engaged with the IOP in his undertaking and report of CPD activities as required under Parts 4 and 5 of the 2015 Rules as an inherent obligation upon him and the declaration that he had done so was 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 31 October 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 rely on the uncontroverted evidence of Mr John Bryan that the Respondent completed and submitted his continued registration application in terms of Allegations 4(a)-(e). The requirement the subject of Allegation 4(b) was an inherent part of the Respondent's obligations pursuant to the 2015 Rules and the declaration 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 31 October 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 rely on the uncontroverted evidence of Mr John Bryan that the Respondent completed and submitted his continued registration application in terms of Allegations 4(a)-(e). The requirement the subject of Allegation 4(c) was an inherent part of the Respondent's obligations pursuant to the 2015 Rules and the declaration that he regularly carried 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 31 October 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 rely on the uncontroverted evidence of Mr John Bryan that the Respondent completed and submitted his continued registration application in terms of Allegations 4(a)-(e). The requirement the subject of Allegation 4(d) was an inherent part of the Respondent's obligations pursuant to the 2015 Rules and the declaration that he had created and actively maintained a learning profile as part of his ePortfolio which detailed all 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 31 October 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 rely on the uncontroverted evidence of Mr John Bryan that the Respondent completed and submitted his continued registration

application in terms of Allegations 4(a)-(e). The requirement the subject of Allegation 4(e) was an inherent part of the Respondent's obligations pursuant to the 2015 Rules and the declaration 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 relation to Allegation 1(a) and, separately, Allegation 2(a) for the reasons set out above.
 - (b) Allegations 4(a)-(e) was declared on 31 October 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

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 IIOP. 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 IIOP 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 as regards any level of insight into his wrongdoing and his email of 22 November 2022** gives the Committee no assurance in this respect. 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) **In recommending suspension and the imposition of conditions, the Committee has considered, in particular, the failure of the Respondent to show any insight. His correspondence of 22 November 2022 and 3 August 2022 fails to express any understanding or remorse and fails to give any assurance that the Respondent 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 mitigating circumstances, including: -

- (a) The Registrant has had a blemish free career to date.
- (b) The limited level of engagement by the Respondent confined to his email dated 22 November 2022.
- (c) The challenging and personal circumstances as set out by the Respondent in his email of 22 November 2022.

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:



NAME

Dermott Jewell, Chairperson

DATE:

14 August 2023