

MEDICAL COUNCIL OF IRELAND

FITNESS TO PRACTISE COMMITTEE

UNDER PART 8 OF THE MEDICAL PRACTITIONERS ACT 2007

RE: REGISTRANT [WITNESS B]

REGISTRATION NO: 405670

HEARING BEFORE THE FITNESS TO PRACTISE COMMITTEE

AT KINGRAM HOUSE, KINGRAM PLACE, DUBLIN 2

ON THURSDAY, 13TH FEBRUARY 2025 - DAY 7

7

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APPEARANCES

THE COMMITTEE :

MR. PAUL HARKIN - CHAIR
MS. MARY DEVINS
DR. MARY DAVIN-POWER

LEGAL ASSESSOR :

MR. DIARMAID MCGUINNESS SC

FOR THE CEO :

MR. HUGH McDOWELL BL

INSTRUCTED BY :

MS. SARA O'SULLIVAN
SOLICITOR
MESSRS. FIELDFISHER
SOLICITORS

FOR THE REGISTRANT :

MS. MAURA McNALLY SC

INSTRUCTED BY :

MR. FAISAL KHAN
SOLICITOR
MESSRS. FSK SOLICITORS

ALSO PRESENT :

MS. JANE HORAN
PROFESSIONAL STANDARDS SECTION OF
THE MEDICAL COUNCIL

ALSO PRESENT :

[WITNESS B], REGISTRANT

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1 THE HEARING RESUMED ON THURSDAY, 13TH DAY OF
2 FEBRUARY, 2025 AS FOLLOWS:

3
4 CHAIRPERSON: So, good morning to you all, this is an
5 Inquiry by the Fitness to Practise Committee under Part 10:34
6 8 of the Medical Practitioners Act of 2007. This is
7 Day 7 of an Inquiry into allegations of professional
8 misconduct and/or poor professional performance and/or
9 a contravention of a provision of the Medical
10 Practitioners Act 2007, including a provision of any 10:35
11 regulations or rules made under this Act on the part of
12 a registered medical practitioner.

13
14 Although this Inquiry is proceeding in public, the
15 Complainant is being anonymised as witness A and the 10:35
16 Registrant is being anonymised as witness B. In the
17 event that either witness is inadvertently referenced
18 by their actual name or in way that might identify
19 them, parties to this Inquiry are ordered not to close
20 that identity. The transcript to this Inquiry will be 10:35
21 amended, as necessary, to correct any inadvertent
22 disclosures.

23
24 So, good morning to you all again, and I am happy now
25 to hear from Ms. McNally. 10:35
26

27 APPLICATION BY MS. McNALLY:

28
29 MS. McNALLY: I am very much obliged, and thank you for

1 the time, I am sorry we were late coming in. My
2 instructions are that my client, witness B, is now
3 going to follow a certain course of action in respect
4 of the eight charges that arise under the Notice of
5 Inquiry, where he is accepting of the allegations that 10:36
6 have been made out against him through the evidence
7 adduced thus far by the CEO of the IMC. So, he is
8 accepting that certain behaviour of WhatsApp messages,
9 text messages, phone calls, occurred, and I mentioned
10 this to Mr. McDowell just before we came in. 10:36

11
12 So, in the circumstances where he is acknowledging that
13 he did not comply with the CDP requirements, and where
14 he is acknowledging that he did make the various
15 contacts with the various witnesses, as are referred to 10:36
16 in what I have been referring to as the charges, my
17 submission would be -- it is not my submission, but my
18 application is, that an order to allow me address the
19 Committee in respect of mitigation, he now having held
20 up his hands, that I would be asking for time so that I 10:37
21 can get my references together and to address certain
22 items regarding medical evidence, such as information
23 regarding prescriptions, et cetera, all going in
24 mitigation, I would submit to the Committee, but I
25 could make those submissions when we are next back 10:37
26 here.

27
28 So, to use the vernacular, he is holding up his hands.
29 I have instructions to apologise to those to whom

1 communication was made, particularly to witness A. I
2 can make a more fulsome apology on his behalf when we
3 have had an opportunity to sit down and formulate the
4 appropriate wording, if necessary, but this is all
5 very... obviously I am usually much more verbose than 10:37
6 this and more long-winded, so this is just a short
7 version of the apology and the holding up of the hands.

8
9 Then I know Mr. McDowell will probably have some
10 application as to what is the appropriate manner or 10:37
11 method by which I should be holding up my hands, or how
12 I should go about it, or when I should go about it, and
13 is it appropriate now, et cetera. Again, it's all very
14 -- we are trying to formulate it.

15 CHAIRPERSON: Sure. Well, first of all, I appreciate 10:38
16 that, and thank you very much for bringing that to our
17 attention. Could I just confirm you are talking in
18 respect of all eight allegations?

19 MS. McNALLY: In respect of all eight allegations. And
20 Witness B is here and he is happy when he is in a 10:38
21 position to either give the apology directly himself or
22 through me when it has been properly formulated.

23 CHAIRPERSON: Thank you for that. I will ask
24 Mr. McDowell if he has any comments?

25
26 SUBMISSION BY MR. McDOWELL:

27
28 MR. McDOWELL: Thank you, Chair, and thank you to
29 Ms. McNally.

1 So, all of that is noted, and I suppose there is just
2 one issue outstanding, or one significant issue
3 outstanding from our perspective, which is that, and
4 Ms. McNally and I have discussed this; as I understand
5 it, witness B is accepting or admitting all of the 10:38
6 allegations made against him in the Notice of Inquiry
7 as to fact. But what I think needs to be addressed is
8 whether he is making admissions as to professional
9 misconduct, poor professional performance and a breach
10 of the Act, all of which are alleged in the Notice of 10:39
11 Inquiry.

12
13 And the reason that is an important is because if the
14 answer is that is yes, he is making those admissions,
15 then the next stage is that, assuming that the 10:39
16 Committee then makes findings on the basis of those
17 admissions we move on to a sanction hearing, and
18 obviously my Friend can make whatever sort of plea in
19 mitigation she wants to make.

20
21 But if it is the case that admissions as to fact only
22 are being made, and admissions as to professional
23 misconduct, et cetera, are not being made, then
24 obviously my Friend needs to be afforded an opportunity
25 to explain to you how she says that the facts, as 10:39
26 admitted, do not constitute professional misconduct,
27 poor professional performance or a breach of the Act.

28
29 And what I am anxious to avoid is a scenario where the

1 plea in mitigation and the submissions as to whether
2 the threshold for misconduct, et cetera, is met, I am
3 anxious to avoid a situation where those are blended
4 into a single exercise, because the Committee's job is
5 to decide whether the facts and allegations are proven 10:40
6 based on the evidence properly admitted before it.

7
8 As I understand it, my Friend isn't going to call any
9 evidence. And if that's the case, then in applying to
10 you, or in submitting to you that professional 10:40
11 misconduct or poor professional performance haven't
12 occurred, she must be confined to the evidence as
13 tendered by the Chief Executive, and questions around
14 references and so on that might ordinarily form part of
15 a plea in mitigation shouldn't be before the Committee 10:40
16 when deciding as to whether to make findings of
17 professional misconduct and poor professional
18 performance.

19
20 So, it's really just an issue of sequencing to make 10:40
21 sure that we don't blend a plea in mitigation with a
22 submission on whether there should be findings made at
23 all.

24 CHAIRPERSON: Thank you, that's very clear.
25 Ms. McNally. 10:41

26
27 SUBMISSION BY McNALLY:

28
29 MS. McNALLY: As I say, he is accepting of the charges,

1 so he is accepting, without going through the wording
2 of each -- if you --
3 CHAIRPERSON: So --
4 MS. McNALLY: I am sure it will be put to him at some
5 stage, but the answer is yes, he is accepting that the 10:41
6 behaviour that's referred to, it's poor professional --
7 I am trying to look at the wording I have underlined,
8 poor professional performance, misconduct, disgraceful,
9 dishonourable, accepting all of that.
10 MR. McDOWELL: Very good, well, that's --
11 MS. McNALLY: He can't hold up his hands and --
12 CHAIRPERSON: He can't hold his hands up any more is
13 what you are saying?
14 MS. McNALLY: More or less.
15 CHAIRPERSON: Yes, okay, well, thank you. 10:41
16 MR. McDOWELL: I am grateful for that clarification, so
17 that makes things more straightforward. Then, I think
18 the sequencing is that the Committee should decide on
19 whether to make findings, and obviously there is now
20 full admissions, so if you need to hear from me on that 10:41
21 obviously I am happy to make submissions, but it may be
22 that you don't need to. And then if you do make
23 findings, there should be an opportunity for
24 Ms. McNally to make submissions to you on sanction.
25 CHAIRPERSON: Thank you. well, thank you for that. 10:41
26 And as you say, Mr. McDowell, the normal sequence of
27 events is we first of all as a Committee decide whether
28 the allegations are proven as to fact, first of all,
29 and whether or not they amount to professional

1 misconduct.

2
3 The fact that admissions have been made certainly eases
4 this Committee's workload, but there is a significant
5 body of work still to be done by this Committee to
6 prepare a report for Council. 10:42

7
8 On the issue of sanction, this Committee will be making
9 a -- if it makes those findings, which I think we are
10 all now agreed are more than likely, the Committee will 10:42
11 then make a report to Council in which it makes
12 recommendations, but this Committee doesn't make --
13 doesn't apply sanction; the process of sanction is one
14 done by the Council.

15
16 So, what we ordinarily do is we invite from both sides
17 submissions specifically on the issue of sanction.

18
19 There is a further opportunity for both parties to
20 present, once the report from this Fitness to Practise 10:42
21 Committee is submitted to Council, there is an
22 opportunity for both parties again to make further
23 submissions. So, if you feel that you don't have all
24 your necessary testimonials and references, there will
25 be a further opportunity when the matter comes before 10:43
26 Council.

27
28 So, what I was going to suggest, I will invite
29 Mr. McGuinness if there is anything he wants to advise

1 us of to make sure that we have covered everything.
2 Then we would adjourn for today and we will begin
3 working on our deliberations, if there is no more
4 evidence to be adduced. That would then allow us to
5 reassemble either this afternoon, if you were ready, or 10:43
6 tomorrow morning to hear submissions on sanction.

7 MS. McNALLY: I would be asking for time, I gather, I
8 don't have my paper diary, I have not a computer
9 person, but I don't have the paper diary. I think it's
10 back here on 10th or 11th March... 11th March, sorry, 10:43
11 thank you, 11th March, I would be asking for that date,
12 at which time I would have my references and such
13 information ready and my submissions on the back of
14 those references ready, et cetera, in mitigation, or
15 for mitigation. 10:44

16 CHAIRPERSON: And Mr. McDowell, have you any comments
17 on that?

18 MR. McDOWELL: well, I mean, on the one hand, fairness
19 dictates that Ms. McNally, if she says she needs time
20 to put the evidence she wants to put before you in 10:44
21 mitigation, it's difficult to see how -- if she says
22 she needs the time, it is difficult to see how I can
23 argue against that. Obviously this matter has dragged
24 on for a very long time and the admissions have been
25 made at well beyond the eleventh hour, but it is the 10:44
26 situation we are in. And obviously Ms. McNally and her
27 solicitor have come into the case at a late stage so
28 they can't be held accountable for a lot of what's gone
29 on before, so I am in the Committee's hands, but I

1 suppose all I can do is repeat the fact that this has
2 dragged on for a long time and we are anxious to
3 conclude it as quickly as we can.

4 CHAIRPERSON: My Committee colleagues would like to
5 rise for a few moments just to discuss the matter. 10:45
6 Before I do that, I would just ask Mr. McGuinness, do
7 you have anything you would like to say to us?
8

9 LEGAL ADVICE BY MR. MCGUINNESS:
10

11 MR. MCGUINNESS: Chairman, I just want to advise the
12 Committee that as of this moment on the state of the
13 evidence, the evidence of witness A has not been
14 contradicted by any other witness's evidence, it has
15 been challenged in cross-examination to an extent. 10:45
16 However, obviously facts put in cross-examination do
17 not become evidence unless accepted by the witness.
18 And in the context of the admissions made by
19 Ms. McNally on behalf of her client in relation to the
20 entirety of the allegations, both as to fact and 10:45
21 consequence of breach, I am in the position to advise
22 the Committee that it is entitled at this stage to make
23 the relevant findings in terms of finding the facts and
24 the allegations proven, so as to enable it to proceed
25 to a sanctions hearing, or to hear submissions in 10:46
26 relation to sanctions on whatever date would appear
27 appropriate.
28

29 It is a matter for the Committee then to consider what

1 is the most appropriate date in the context of the
2 concession made by Mr. McDowell that fair procedures
3 would seem to obviously require some time for the
4 preparation of material, references, and possible
5 witnesses as well, in relation to the approach now
6 taken by the Registrant in the matter. 10:46

7 CHAIRPERSON: Thank you. I would just ask both parties
8 if you have any comments on Mr. McGuinness's advice?

9 MR. McDOWELL: No, Chair, I agree with it. I suppose
10 just repeat, that if the Committee did need to formally 10:46
11 hear submissions from me as to why it should make
12 findings I can make those submissions, but for the
13 reasons Mr. McGuinness says I just wonder is it
14 necessary in the circumstances of this case.

15 CHAIRPERSON: Thank you. 10:47

16 MS. McNALLY: I am in the Committee's hands.

17 CHAIRPERSON: Okay, thank you. Well, we will rise for
18 a few moments just to discuss the matter so that we
19 have clarity around how we will proceed. So, if you
20 give us just a few minutes, we will do that, but thank 10:47
21 you very much for your help.

22
23 THE HEARING ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

24
25 COMMITTEE DECISION: 11:01

26
27 CHAIRPERSON: Thank you all for your patience. So, the
28 Committee has met to consider matters, and we have
29 decided to proceed on the following basis:

1 As Mr. McGuinness has advised us, we are now as a
2 Committee in a position where we can make findings of
3 fact, so we will propose to adjourn now until 11th
4 March at 10 o'clock here in Kingram House, where we
5 will receive submissions in respect of the issue of 11:02
6 sanction. It is not necessary, I think, for any
7 submissions in respect of the proving of professional
8 misconduct, but we do note that the CEO's witness did
9 not make a finding of professional misconduct in
10 respect of the first allegation, didn't feel that they 11:02
11 were minded to do so-so, so I am happy to hear
12 submissions on that matter.

13
14 But they were, I presume, working on the basis that it
15 is in your agreement that we can make findings of fact 11:02
16 and we can make findings of professional misconduct in
17 respect of all the other allegations, with the
18 exception of Allegation 1.

19
20 Does that make sense, first of all? 11:02

21
22 SUBMISSION BY MR. McDOWELL:

23
24 MR. McDOWELL: Yes, Chair, thank you. So, just to
25 address you on that point; obviously, I suppose, the 11:02
26 starting point is that Ms. McNally has admitted on
27 behalf of her client that the first allegation was
28 professional misconduct.
29

1 The second thing is that, had the Inquiry proceeded in
2 a contested fashion to its conclusion, I was going to
3 ask the Committee to make a finding of professional
4 misconduct in respect of the first allegation,
5 notwithstanding the fact that Dr. Flynn said it didn't 11:03
6 amount to professional misconduct in his view, I was
7 going to say it was a matter for the Committee.

8
9 So, I suppose, it is just worth clarifying that point,
10 that I don't think that because Dr. Flynn has said that 11:03
11 he doesn't think it amounts to professional misconduct
12 that you should -- that that binds you to not make a
13 finding in that respect, especially when it has been
14 admitted on behalf of the Registrant.

15 CHAIRPERSON: I take that point, and that's very 11:03
16 helpful. So, what we can do is we can include specific
17 submissions in respect of that status of that first
18 allegation when we resume on the next day, and that
19 gives Ms. McNally an opportunity to prepare.

20 MS. McNALLY: I am much obliged, and I just want to 11:03
21 make sure on the record that it is the Registrant who
22 is admitting.

23 MR. McDOWELL: Indeed, yes, yes, yes.

24 CHAIRPERSON: Thank you, that's very helpful. Does any
25 matter arise for me to deal with here? 11:04

26 MR. McDOWELL: The only thing I was going to ask,
27 Chair, is that, assuming that we are going to be
28 provided with some documents that Witness B intends to
29 rely on in mitigation, that those could be provided to

1 us a week in advance of the 11th March, if possible.
2 CHAIRPERSON: I don't think that's an unreasonable
3 suggestion.
4 MS. McNALLY: As soon as I can, I will. Obviously,
5 it's -- I am asking medical personnel to produce 11:04
6 references, and if it's like getting medical reports it
7 might be at the eleventh hour, but obviously we will do
8 our best -- as soon as we have them, my colleague will
9 have them.
10 CHAIRPERSON: Thank you for that. 11:04
11 MS. McNALLY: I understand the need to have them sooner
12 rather than later, so needless to say we will be doing
13 our utmost to...
14 CHAIRPERSON: And clearly as I said also, if you are
15 not able to have your full submissions for this 11:04
16 Committee, the report will go to Council, and you will
17 have another opportunity there to make further
18 submissions in respect of testimonials and references.
19 MS. McNALLY: Much obliged.
20 CHAIRPERSON: But I think if you could do your best to 11:05
21 provide the material in which you wish to rely on, as
22 Mr. McDowell has invited, a week beforehand, that would
23 be very helpful to this Committee also. So, if there
24 are no other matters to arise --
25 MS. McNALLY: Do you want us to present them to the 11:05
26 Committee in advance as well, yes?
27 CHAIRPERSON: I think that would be very helpful.
28 MS. McNALLY: Okay, much obliged.
29 CHAIRPERSON: I am just conscious that this Inquiry

1 opened at the beginning of April, mid-April of last
2 year, and for a variety of reasons it has taken until
3 now, so we are keen that this matter comes to a
4 conclusion. And I think it is in everyone's interest,
5 including your client, Ms. McNally, that the matter
6 comes to a definitive conclusion as promptly as it can.

11:05

7
8 So, I just want to thank you both for your submissions
9 today. I think that has eased this Committee's
10 workload and it will allow us to proceed on the 11th at
11 10 o'clock.

11:06

12 MR. McDOWELL: Sorry, Chair, could I just say two
13 things; first of all, just for the avoidance of any
14 doubt, in addition to poor professional performance and
15 professional misconduct, there is also an allegation of
16 a breach of the Act in relation to the CPD limb of the
17 case, so just to flag that.

11:06

18
19 The other thing to say is, just going back to
20 Allegation 1 for a moment, you had suggested the
21 possibility of making submissions on the 11th, but in
22 some respects it might be cleaner if the Committee is
23 coming to a sanction hearings knowing what findings it
24 is or isn't making, so I am not going to make
25 submissions to you on it, you have heard the admission
26 and you have heard Dr. Flynn's evidence. And what I
27 was going to say was, it is a matter for the Committee
28 whether it wants to make a finding of misconduct in
29 respect of Allegation 1 or not. I don't think I can

11:06

11:06

1 put it any further, you have heard all the evidence.

2 CHAIRPERSON: Thank you. And I think I may have
3 misspoke slightly; I just wanted to acknowledge that
4 Dr. Flynn in his evidence didn't make that finding, so
5 I think your point is exactly right, it is open to this 11:06
6 Committee and we note the admissions that have been
7 made, so I am sorry if I have confused matters.

8 MR. McDOWELL: Yes, yes, thank you.

9 CHAIRPERSON: So, no other matter arises?

10 MS. McNALLY: No. 11:07

11 CHAIRPERSON: Okay, so we will adjourn now and we will
12 reconvene on 11th March here in Kingram House at
13 10 o'clock. Thank you very much.

14 MR. McDOWELL: Thank you, Chair.

15 11:07
16 THE HEARING WAS THEN ADJOURNED TO TUESDAY, 11TH MARCH
17 2025 AT 10AM

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