

Presentation by P.A.A. to Council 23/3/2017

Thanks

Registrar and President for facilitating this presentation to you as Council Members who are charged with making a decision which will impact the lives, status and employability of all registered qualified Pharmaceutical Assistants(P.As). We are very happy to be given the opportunity to address you directly. The executive, when asked by us, why they felt the necessity to define temporary absence, always maintain that theirs is not a decision making role and their function is always do what the Council directs. For that reason, we feel that it is imperative that we are allowed put our argument forward to you the decision makers. We fail to understand, that one of the conditions we had to accept, in being allowed to make this presentation was that you the Council are not permitted to ask us questions.

Introduction

Rita O'Brien some know me from some of the committees of Council. First P.A to be allowed on any committee of Council,circa 2010 PD&I and currently RQR. I lecture in pharmacy practice in D.I.T and practice as a Pharmaceutical Assistant in community pharmacy. I am here as Chair of PAA at the request of my fellow Pas to present our case to you. I sat my Leaving Cert at 16 years old, went into the profession and am currently still there at 64 so have 48 years experience in pharmacy life, probably longer than some of you are on this earth .All Pas have in excess of 38 years experience as the last exams were held in 1985.

Reasons for this Presentation

To address the PSI intention to invoke section 30 of 2007 Pharmacy Act and specifically the term, enshrined in law since 1890 "**Temporary Absence**".

Why does the Society need to address this issue now?

We have never been given clear answers, as to the reasons, you are now in 2017 deciding to address the issue, other than being told it is your duty as Regulator to protect the Public. We have no way of knowing, officially, what your exact concerns around us are. We will try in this presentation to address the concerns, we perceive you might have, but it is disappointing that the discussions you will hold will be in

private. When we applied to the PSI for information on the content of the public consultation we were refused on the grounds of public interest that the PSI could not develop S.Is under section 30 and also to keep its deliberations confidential until the deliberation process is complete. Premature release could contaminate the decision making process. However twice in that letter from Head of Operations it stated that the process would be held in the public session.

The purpose of a public consultation is to inform evidence-base for the making of S.Is including any alternatives. The PAA have not got access to the contents of the Consultation in its entirety but the information we have gathered independently is the overwhelming majority of opinion is opposed to the proposal.

You have been given power, to define Temporary Absence with the permission of the Minister for Health, under the Act to invoke Section 30 . It specifically says you may, NOT, you must define it. This power, however, must be exercised with due regard to the vindication of the constitutional rights of persons affected by the measure and cannot be exercised so as to deprive persons of an otherwise lawful right, the Right to Earn a Living. Implementing the proposed definition will deprive pharmaceutical assistants of this right and effectively results in the extinction of our profession.

As outlined in our submission, a survey carried out in 2016, found that 45% cover more than 12 hours per week, with 32% of these covering 13 to 20 hours, 100% cover emergency hours, 92% cover holidays, 39% of PAs do not work or work less than 3 hours per week with pharmacist., 10% of total respondents cover one day a week .

It is the aim of all of us to protect the public.

PAs have spent a lifetime career caring for the public. We challenge you to prove where we are a threat to public health or safety. We have always acted in a professional manner, not a danger to the public and we demand you to produce evidence based research to prove otherwise.

We can prove that we are capable, competent and qualified to do the job

- i) We have received certification from your own PSI formulated and validated programme
- ii) We are registered with your Society
- iii) We are employed by pharmacists who value our contribution to the profession and their business.

Some elements of the proposal are acceptable , but applying exact hours around the TA clause make no sense. We are either qualified to do the job or we are not. How can it be

sensible that a professional is capable of doing a job for 12 hours, or any specified hours, and become a criminal one minute after that time in a given week and next week be able to practice autonomously again? How is this logical that the PSI would deem that for 12 hours we are no threat to public safety but after that time has expired we become a danger to the public. Explain this logically and we can accept the argument. If the PSI considers this to be true i.e not safe after x number of hours, your proposal at best can only be some form of risk limitation and that is not good enough for a regulatory body.

Addressing the need for supervision on a weekly or monthly basis.

This implies that we are in a training role and not qualified professionals. Please give me an example in any other profession where post graduation, graduates are required to be supervised for the rest of their working lives. This is an unprecedented conditionality on a qualification post conferral.

Up to the 2007 Act and for many years after, pharmacists were not subject to compulsory CPD and Fitness to Practice. They were deemed safe to practice by virtue of their qualification, certification and registration. The gold standards of CPD and Fitness to practice introduced in the Act are now the additional measure of competency. Through no fault of our own, the architects of the 2007 Act omitted to include Pas in CPD and Fitness to practice. We have always maintained and suggested to the PSI that we should be included. This is the gold standard applied to pharmacists it should also be a requirement of all professionals dispensing medication and advice to the public.

Reasons why PSI feel they need to invoke Section 30

We have already said that we do not pose a threat to the safety of the nation.

Concerns around the qualification itself?

Are you concerned it is an outdated qualification?

If that is the concern, so also is the pharmacist, who trained pre the degree who trained in exactly the same way as we did. Or the 3 year degree student who did 1st Science with all other science students and then came to the College of Pharmacy Shrewsbury Rd, as we did, to finish the course.

We,like those degree students studied,

- I) Pharmaceutics both practical and theoretic ,
- II) physiology,

- III) pharmacology ,
- IV) pharmacognosy
- V) forensic pharmacy.
- VI) Some of the subjects we sat with the degree programme and as you can see by exam papers we previously distributed the exam papers bear a remarkable similarity. The course was delivered and examined by the same lecturers that delivered the degree programme.

We unlike the degree programme, studied under a P.S.I approved tutor pharmacist for 3 full years, 150 weeks before studying our academic programme. This was an integrated programme of study and whilst many institutions of higher education moved to a degree programme, the value of a practise based integrated programme is now the recognised route for many professions including pharmacy with the introduction of the Masters integrated programme.

The calibre of the student was very high and for many, mainly women, the only means of accession to the profession. There was only one college training pharmacists TCD and only 50 could be accepted on to the degree programme. In the Ireland of the 60s and 70s, as seen by recent revelations, women were not expected to continue work once they married. The focus on education in the science subjects at secondary level was on the male population. Hence there was limitations on women accessing the degree. Our method was to become Pas. Again only 50 or so Pharmaceutical Assistants could be accommodated annually, nationwide and so the calibre of student was excellent. Pharmacy students once qualified went on to manage pharmacies either inherited from parents or other means. We were the ones that provided holiday relief etc. This suited us, as women in those days would not have aspired to owning a business.

Many other professions nurses, solicitors, accountants, architects to name a few also trained with a non degree status in our time. Many including my own daughter who trained as a nurse in England in recent times have realised the value of a more practise based programme and have reverted to that.

When discussing the dilemma we face of reduction in our status and value of our qualification it is met with incredulity by many, particularly outside the profession of pharmacy. What other profession attempts to introduce legislation to curtail their status because their qualification is not that which exists in the present climate? Would pharmacists, pre the degree and those with a 3 year qualification accept legislation to diminish their qualification because a 4 year honours programme or a Masters programme was introduced. No, their value is in the qualification in place at the time of qualifying and the years of experiential learning they have gained since. PAs all have at least 35 years of experiential learning. Pharmaceutical assistants are persons who have passed the examination prescribed for that purpose by the Council of the Pharmaceutical Society of Ireland. Pharmaceutical assistants are competent(pursuant to section 19 of the Pharmacy (Ireland) 1875 (Amendment) Act, 1890 (as amended by section 7(5) of the Pharmacy Act, 1951 and repealed by the Pharmacy Act 2007) to

transact the business of a pharmacist in his “temporary absence” but not “to keep open a shop on their own account”.

Once the qualification was obtained, the qualified pharmaceutical assistant had a statutory entitlement under section 19 aforesaid to transact the business of a registered pharmacist in their absence. Although, the provision enabling their qualification has now been repealed, the right of existing pharmaceutical assistants to continue to practice their profession subsists and is acknowledged by different provisions of the Pharmacy Act, 2007 (not least section 30(1) and section 13 which provide for the maintenance of a Register of Pharmaceutical Assistants).

So the only real check laid out in law, is that they cannot keep open a shop on their own account. There has never been a statutory definition of “temporary absence” and de facto a wide approach was taken to that term with pharmaceutical assistants carrying on the business in the temporary absence of the pharmacist for many months in the case of illness. There was no impediment to the pharmaceutical assistant acting as a pharmacist in the employment of a pharmacy as long as the pharmacy business was being run by a pharmacist. The difference therefore is not in the professional status as acting pharmacists but in the role of management and all that entails. Would this be therefore the additional status of supervising pharmacist?

Supervising Pharmacist

The role of supervising pharmacist is well documented in the Act. They must be in whole-time charge and so if a pa is working with a supervising pharmacist, they can only cover in the temporary absence of that supervising pharmacist. Here we maintain that temporary absence is already in place in the Act.

The new features of regulation and control under the Act should not make it necessary to restrict the practice of pharmaceutical assistants thereby interfering with the right to earn a livelihood and practice their profession of those individuals, through a prescriptive approach in exercise of powers under section 30(2) of the 2007 Act. It is very questionable, if there is a “common good” interest which necessitates the further prescription of the role of the pharmaceutical assistant in circumstances where the role of the supervising and superintendent pharmacist is prescribed in statute in a manner which clearly provides for close and personal control of the business of the pharmacy by the supervising and superintending pharmacist.

The name of our qualification can be misleading. When I qualified I was called a qualified registered Assistant Chemist. With time chemists became pharmacists so we became pharmaceutical assistants or shortened to qualified assistants. That did not

pose a problem back then as all within the profession recognised the qualification. When we were performing the functions under our certification, acting in the temp abs of a pharmacist, we were assisting the pharmacist to have a day off, holidays unscheduled short absences, emergency situations. The term is not as recognised today by young pharmacists and those outside the profession. It is often confused with the IPU or vocational 12 week course for OTC shop assistants.

You must not dwell on the name of the qualification but rather on the content of the course and the entitlements of the graduate, namely qualified to cover in temporary absence , perform all the functions of a pharmacist but not to manage or keep open shop. The difference therefore is not in the professional status as acting pharmacists (in temporary absence of the pharmacist) but in the role of management and all that entails. The function of the supervising pharmacist, in addition to their professional role as pharmacists is to manage and put in place procedures in line with PSI recommendations.

Another reason you might wish to invoke section 30 is around the fear that you may be accused of not properly regulating a group within pharmacy who are not subject to CPD and Fitness to Practice sanctions.

Some have referred to us as an unregulated group. This terminology is not accurate we are qualified, registered and paid up members of the PSI .

This very real problem of ambiguity around CPD and Fitness to Practice has been suggested,by us, to the PSI on numerous occasions. At a meeting with the PSI executive some years ago we were told by a PSI advisor to Council that we were in an enviable position that we did not have to comply with CPD requirements and fall under Fitness to Practice sanctions.

This might sound attractive to all ,however, this was the very reason cited by an ex Registrar of this Council in a letter to the IPU some years ago when he stated that we were not professionals as we did not fall under CPD and Fitness to Practice Regs.

C.P.D

I am adamant that I am legally required to keep up with C.P.D. As a requirement and under your function as Registrar as stated in the Act you will not register us unless we tick the box when registering that we will keep up to date with C.P.D. To prove this point I attempted to register on line in 2015, my application was not accepted as I did not tick the box to say I was compliant with CPD requirements. I then downloaded a paper version sent that and again was refused registration until I had signed the box. This I presume is not just a box ticking exercise on a form but a requirement of my

registration. I agree that it is not an overseen portfolio by you but it is nonetheless a requirement of registration.

Fitness to Practise

I must be compliant with CPD so the other problem of Fitness to practice must be addressed.

We maintain that the Act could be amended to include PAs in Fitness to Practice. As you know, the Act states

- (a) it is the duty of the Society to—
 - (i) keep the registers,
 - ii) determine and apply the criteria for registration,
 - (iii) draw up codes of conduct for pharmacists,
 - (iv) determine, approve and keep under review programmes of education and training suitable to enable persons applying for registration to meet those criteria and pharmacists to comply with those codes,
 - (vii) take suitable action to improve the profession of pharmacy,
- (b) the Society shall have power to—
 - (i) conduct inquiries into the qualifications and fitness of persons to practise.

Hence there is an onus on the Society to ensure PAs as 'persons' are fit to practice

Our colleagues had discussions with various politicians Minister Harris, Minister Varadkar, Minister Noonan opposition politicians Wille O'Dea and Senator Ivana Bacik to name but a few and we are happy that if necessary they would support an amendment .

I believe the PSI worked with the Health and Social Care Regulatory Forum to promote collaboration and efficiencies with other Regulatory Bodies in Health and Social Care sectors in relation to statutory disciplinary processes.

Following a request by Dept of Health for a report on Fitness to Practice by all health regulatory bodies the P.S.I contributed extensively to the report. It considered amending legislation to ensure processes run efficiently and bringing all under one umbrella. The 2005 Act brought many other professions under Fitness to Practice for the first time namely social workers, speech and language therapists, podiatrists, dieticians, opticians and dispensing opticians. The latter group I might add were pharmacists who did a short course of a few weeks to become dispensing opticians in my day. With all this experience the PSI could surely find a method of including us either 2007 Act or under the new health professionals act.

If the PSI feel that this requirement would satisfy their worries with regard to P.As around the safety of the public it could be introduced speedily.

There might be a fear that amendments could take a long time to implement but if there is a will on all parties it could be brought in within a few days. Minister Varadkar

signed legislation S.I 449 of 2015 Medicinal Products (prescription and control of supply)regs which allowed persons to administer 6 prescription only meds to persons for purpose of saving lives or reducing distress.

Physiotherapists recently brought in Professional Conduct and bye laws to improve the terms of their registration.

Fitness to practise contains a few elements

- i) Educational and practical ability
- ii) Unfit to practice due to drug or alcohol addiction or sexual deviancy.

The first is dependent on our qualification, registration, and recently for pharmacists CPD and CPE. The other element most definitely requires some method of sanction or suspension or assistance for all professionals within or outside the profession of pharmacy.

P.A.A wish to enforce Section 30?

It has been stated that P.As are behind a push to enforce a legal update of Temp Abs.

This is simply not true.

We have pleaded to retract the enforcement of the illegal implementation of the 1994 Code a version of Temp.Absence that the old PSI and subsequently the PSI executive are enforcing.

Our legal team wrote to the PSI to get a signed copy of the Code .They pointed out that there was no evidence that the code was implemented into law and therefore the old PSI were ultra vires their power in implementing a version of Temp absence. No version of the 1890 " Temporary Absence" clause is as yet legal as the Minister must approve it under the 2007 Act, as far as we are aware. Why are we here today if I am not correct.

In 2008 a PSI expert on the Act addressed our AGM. At it she stated that PSI had no intention of defining Temp.Absence. No mention of the 1994 Code was alluded to by either her or us. We ended that meeting delighted that the Act was the up to date situation re Temp.Absence.

I might add that since I joined this committee in 2008 I have met with 5 different Registrars ,as many Presidents of Council different executive members all with differing views on their version of temporary absence.

On the topic of mapping the qualification, despite being on your service plan in 2011/12/13/14/15 the matter has not been addressed. In 2015 a court judgement

prevented HETAC validating existing programmes. Despite a request by us to look at other methods to date we have not heard from you.

Solutions

1. Leave the situation as it existed since 1890 and allow us to live out our working lives with dignity and certainty. Here we need certainty and guarantees that the PSI will not revisit the issue. We cannot have a situation where this is not solved satisfactorily and another Registrar in the future decides to revisit this issue.
2. Introduce compulsory, overseen C.P.D. and a Fitness to Practice Regime for all professionals dispensing and advising the public by any of the amendments outlined by our senior counsel.
3. Strike us all off the Register, retire us and compensate us for loss of earnings and the mental stress that we have endured because we undertook a P.S.I course that you now seem to have a problem with.

SUMMARY

Narrowing of the factual parameters pertaining to the practice of PAs by prescriptive measures has the effect of interfering with an established right to practice which attracts constitutional protection as both a personal and property right. Irish Human Rights and Equality Commission Guiding Principles on Proportionality apply here. See Notes and PAA Submission. Concept of temp abs has an established meaning since 1890 Act. It is synonymous with not permanent i.e we cannot conduct a business on our own accord.

It is related to context and depends on the facts of a particular situation. Three factors are relevant

- intention;
- length of your absence; and
- reason for absence.

For example, in defining the temporary absence of the Taoiseach, the High Court found that here the phrase "temporary absence of the Taoiseach" was used, should be interpreted as the temporary absence from the ability to perform his duties during illness or incapacity or while incommunicado for an appreciable time

With regard to interpretation of temporary absence under the 1890 Act, I'm sure you are all aware of the judgement of High Court Judge Costello, where he maintained that

t.a could at that time be only defined by a court, on a case by case basis. In the 1980s temporary absence had in practice many variations from days off, holiday cover, maternity cover etc. When we collected our certificates from the PSI office it was pointed out to us that there were notices from pharmacists looking for holiday cover.

(See handouts of assurances given over the years by T.Ds etc)

Pharmacists are entitled to be heard as individuals, if they breach Fitness to Practice Regulations and there is a very strict structure around sanctions etc

You are proposing to introduce a form of blanket definition on the Fitness to Practice of all P.As by stating we are fit to practice for x number of hours but not Fit to Practice again that week and one minute after the allotted time we become criminals. This sanction is based solely on the fact that we hold a qualification, with a legally held term since 1890, the value of which our employability and status depends. We qualified with your formulated and validated programme which incidentally we paid the PSI to undertake. Do you not believe that your certification is sufficiently robust?

P.As undertook this course in good faith and had a natural expectation to a career pathway and earning capacity. The measures you propose will reduce our employment prospects, our earning capacity and our status within the profession and the wider community.

The danger in legislating in exact terms, will prove extremely difficult. It does not take in to account real life situations.

3 personal examples but all Pas could cite thousands of examples and instances where it cannot work.

Pharmacist whose husband had to be rushed by ambulance at 8am, had a perforated gut and was in intensive care isolation for a few days. I was called to open the pharmacy and continue the business until the crisis was solved. Between myself and the other non supervising pharmacist we provided cover.

Another instance was of another person I worked for whose father was dying. I got a call at 9pm to know if I could possibly work to allow that woman to be with her dad while he was dying.

Another situation was when I worked for one of your predecessors on Council a Fellow of the PSI. I worked for him allowing him to attend meetings and have days off. I got an urgent call to say his son was in an accident would I go straight to the pharmacy. His son had actually drowned.

What would my position be if you implement these rules and I have used up my time that week?

Am I the criminal or is it the Pharmacist?

Where did you pluck a figure of 12 hours could you have chosen the 35 hour recommendation of a full working week as specified legally for employees? Where can you prove the difference between each of these figures in achieving your ultimate aim? Ours is not a profession like for example an office job. We cannot tell the patient that we can only dispense 2 items off their prescription and will have to leave the rest because we have used up our allotted time

Has the PSI considered the Irish Human Rights and Equality Act 2014 section 42 and its obligation to eliminate discrimination and promote equality of opportunity? Have you equality proofed and human rights proofed your SI draft?

Our job is our property and if this proposal leads to the reduction or elimination of our employability we are left at our age with very little prospects.

The employment agencies have been advised not to handle us due to the uncertainty around “temporary absence” and what role we have within pharmacy.

Some of the chains have a policy of not employing us or are making life very difficult for those whom they do employ.

We hope you will carefully consider the content of this presentation. We assure you that we will go to the nth degree to protect our status.

It is very difficult in a 30 minute presentation to include a lifetime career and the intimidation and low self worth we have been subjected to by the PSI around the conflicting views of our entitlements, almost since we qualified.

Should you enact this into law it is the demise of our career. Are we left with any other option but to use our considerable funds and support to go before the legal structures?

Why do you in 2017 after 127years of service to the industry feel we are now a danger and need to bring in measures to bring about our demise, leaving us with no option but to take this final stand in light of how we have been treated over the years for example

- i) The PSI would not go in to the court in the 80s to have temporary absence defined by a judge.
- ii) The PSI took no action to upgrade our qualification, yet this was not a problem for druggists.
- i) The PSI did nothing to map our qualification to the Educational Framework, resulting in PAs not being able to use their qualification in the educational forum, thus requiring them to start from the beginning any educational or training course. .
- ii) The PSI did not notified all PAs of this proposal.

- iii) The PSI executive have always maintained they are bound by the Code, we disagree and have suggested that under Section 5 it is only bound on legally binding agreements which the Code is not. In 1994, I voted against the proposal but the vast majority of non members had no vote that time either. Only pharmacists were balloted nationwide.

- iv) All avenues you have closed. This is more like Feudal Ireland than a modern inclusive society . International best practice in education and under the terms of the Bologna agreement is to lift the glass ceiling and allow progression of all careers. Where are you displaying evidence of this as providers of our course?

- v) The profession of pharmacy is broadly against this proposal. They do express concern that one professional might be responsible for the actions of another but our legal advice has always been that it would be difficult to prove vicarious liability of one professional for another particularly if robust S.O.Ps are in place.

I plead with you each member of this Council to consider very carefully the decision you make.

Produce an overwhelming argument of public safety issues that we can consider.

As Registrar, President and Council members you will go down in history as a group who brought about the demise of a group of elderly mainly women graduates of your own formulated, validated and examined qualification. We are not seeking anymore than the terms we qualified under on the day we qualified.

I hope I have done some justice to all my fellow colleagues, a fantastic, committed, loyal, dependable ,professional group . What a loss you would all be to the Profession of Pharmacy.