

**APPROVED**

**THE HIGH COURT**

[2023] IEHC 325

[2023 No. 37 MCA]

**IN THE MATTER OF SECTION 60 OF THE MEDICAL PRACTITIONERS ACT  
2007 AND IN THE MATTER OF A REGISTERED MEDICAL PRACTITIONER  
AND ON THE APPLICATION OF THE MEDICAL COUNCIL**

**BETWEEN**

**MEDICAL COUNCIL**

**APPLICANT**

**- AND -**

**Z**

**RESPONDENT**

**Ex-Tempore JUDGMENT of Mr. Justice David Barniville, President of the High Court,  
delivered on the 19<sup>th</sup> April 2023**

**1. Introduction**

1. This is my judgment on an application by the Medical Council (the “Council”) for various orders arising from an alleged breach of undertakings given by the respondent to this court on 2 February 2023. These orders include an order pursuant to s. 60 of the Medical Practitioners Act 2007 (the “2007 Act”), directing that the registration of the respondent's name in the Register of Medical Practitioners (the “register”) be suspended until further order of the court. The other orders sought include an order that the respondent doctor be prohibited from engaging in the practice of medicine until further order of the court, and then orders are sought that the Council be at liberty to provide a copy of the order to various different bodies who are listed in the notice of motion. Ancillary orders are sought that would entitle the Council to respond accurately to any request concerning the respondent’s registration status and also that the Council would be at liberty to reflect any order granted on the register.

**NO REDACTION NEEDED**

## **2. S.60(2) of the 2007 Act**

2. This case comes before the court under s. 60 of the 2007 Act. S. 60(2) of the 2007 Act provides that:

*“An application under subsection (1) or (1A) shall be heard otherwise than in public unless the Court considers it appropriate to hear the application in public”.*

In accordance with that provision, this application was heard *in camera*. However, I intend to publish this *ex-tempore* judgment as soon as is practicable. I have anonymised, in the public interest, details that might identify the respondent or any non-legal professional relevant to the proceedings. I have done this by the use of initialising the medical professionals concerned. I have also done so in the cases of certain other people and have referred to the hospital in which the respondent is working as simply “the hospital”.

## **3. Background**

3. The application concerns Dr Z., who is registered on the register of medical practitioners. An urgent application was made in February 2023 for similar orders. On that occasion the Council had issued an originating notice of motion seeking orders under s.60 of the 2007 Act on 1 February 2023. That application was grounded on an affidavit sworn by Dr Suzanne Crowe, the President of the Medical Council, on 1 February 2023. In her affidavit, Dr Crowe set out in some detail the circumstances in which the Council had decided to bring a s. 60 application seeking Dr. Z.'s suspension from the register and the various other orders which were sought at the time.
4. The essential concern was the manner in which Dr Z. had, on a number of occasions, prescribed controlled drugs to patients in unusual circumstances, which had given rise to concerns on the part of various pharmacists, which were brought to the attention of

the Pharmaceutical Society of Ireland, and, in turn, those concerns were brought to the attention of the Medical Council. There were real concerns in relation to the prescribing practices of the doctor through his work as part of an online doctors' service. It was said by Dr Crowe on behalf of the Medical Council that those practices were such as to give rise to real issues, which gave rise to a significant need to protect the public and that the only way it was said that the public's safety could be protected was by making the s. 60 orders sought by the Council.

#### **4. Hearing on 2 February 2023**

5. When that application came before me on an urgent basis on 2 February 2023. Dr. Z. was present and represented by Mr. Michael Lanigan, Solicitor. He had previously indicated that he would be prepared to give undertakings to address the situation and, having heard from the parties, I noted that a s. 60 order is an order effectively of last resort, having regard to its implications for the doctor involved, and having regard to the need to balance the need to protect the public, which is the paramount consideration on an application such as this, against the rights which the doctor has to pursue his livelihood and to his good name and reputation and so on. It is in those circumstances that the court will often consider whether undertakings could be given which would adequately protect the public in light of the concerns that have been expressed by the Medical Council.
6. Having heard from the parties, it was pretty clear to me that appropriate undertakings would satisfactorily address the situation, and on that basis the doctor provided a number of undertakings to the court. Three of those undertakings are relevant to this further s.60 application, because it is suggested that the doctor was in clear breach of same. I propose to set out now three of the undertakings given by the doctor on 2 February, which were accepted by the court in lieu of the making of any s. 60 order

on that occasion.

### **5. Undertakings Given on 2 February 2023**

7. The undertakings were that pending the determination of the complaint made against the doctor under the provisions of the 2007 Act, in particular under Part 7, and, if applicable, Parts 8 and 9 of the 2007 Act, the doctor undertook to the court on oath:

*“(a) not to treat, including prescribing any medication to, any patient who is not a patient of [the hospital Dr. Z works in], (or such other hospital as he may be practising in and in respect of which he has received written approval from the Council),*

*(b) to prescribe only to patients of the hospital (or such other hospital as he may be practising in and in respect of which he has received written approval from the Council) under consultant supervision, and*

*(c) not to communicate by any means, including electronically, with any persons to whom he has issued prescriptions to whilst contracted by DrOnline.ie.”*

He also gave a number of other undertakings, but I do not think it is necessary for me to recite those other undertakings here.

8. On 2 February 2023, the court made ancillary orders giving the Council liberty to communicate the terms of those undertakings to various entities, including to the CEO of the hospital, and also gave the Council liberty to respond accurately to any request from any individual or body regarding the fact of the undertakings, and it was at liberty to reflect the fact of the undertakings on the Council's public-facing register. I was satisfied that those undertakings were sufficient to address the issues of public concern and the public protection requirements that were addressed in Dr Crowe's affidavit.

### **6. Further Application under s. 60 of the 2007 Act**

9. The Council has now brought a further application now seeking orders under s. 60 as I have indicated earlier. That application was issued on 17 April 2023, and has now been heard by me today, 19 April 2023.
10. The circumstances in which the application has been brought are set out in an affidavit sworn by Caren Shanley, a solicitor with the Medical Council, on 11 April 2023, and there is a replying affidavit from Dr. Z. in response to the application, which I will refer to later in this judgment.
11. The essential case made by the Council is that the doctor was, on at least two occasions, in breach of one or all of the three undertakings given to the court on 2 February 2023. The doctor has put in a replying affidavit in which he disputes the fact that he intentionally breached any of those undertakings, although as we will see when it comes to the affidavit, it is clear on the basis of what the doctor himself says in the affidavit that he has undoubtedly breached all three of those undertakings, in my view. I am absolutely satisfied that that is the case, and that is evident from the doctor's own replying affidavit, and I will come to the consequences of that momentarily.

### **7. Evidence and Breach of Undertakings**

12. The affidavit of Ms Shanley explains how the matter came back before the court and, having set out the undertakings which I have mentioned, she says that on 29 March 2023, the Council was contacted via email by a pharmacist, Ms. G. In her email, Ms. G. stated that she was a pharmacist and that she was making contact in relation to Dr Z. She said that she had a patient who was receiving prescriptions from Dr Z, who, she noted, has conditions attached to his registration. She said that she would like to get more information about that to deem if it is appropriate to continue

dispensing prescriptions written by him.

- 13.** Thereafter, another solicitor in the Medical Council, Ms. Julie Dineen, emailed and spoke with Ms. G. on a number of occasions. On 3 April 2023, Ms. G. provided to the Council three redacted prescriptions written by Dr Z. in relation to that same patient (“patient A”). The three prescriptions were as follows:

(a) The first prescription was written on 16 January 2023, predating the undertakings given to the court. On that occasion, the prescription, which was written by Dr. Z. was on the Doctors’ online service notepaper, and it was for a number of drugs:

- a. Alprazolam, which is a benzodiazepine commonly sold under the name of Xanax and it is a controlled drug under s. 4 of the Misuse of Drugs Act 1977 (as amended),
- b. Fentanyl (Effentora), an opioid pain killer and also a controlled drug,
- c. Baclofen, a muscle relaxant used to treat, among other things, multiple sclerosis, and
- d. Gabapentin (Neurontin), which is an anti-convulsant medication used to treat seizures.

(b) The second prescription at issue is a prescription written by the doctor on 17 February 2023 on notepaper from the hospital, and that contained a prescription for precisely the same drugs.

(c) The third prescription was written on 20 March 2023 on hospital notepaper for the same drugs.

- 14.** There was a concern on the part of the Council when that information was brought to its attention and, through its solicitors on 4 April, 2023, the Council wrote the hospital

itself, and to the doctor's solicitor, Mr. Lanigan, indicating its intention to make an application to the High Court and seeking their views on the circumstances surrounding the prescriptions. The two relevant prescriptions for the purposes of the Council's application are the second and third prescriptions that I have mentioned, namely, the ones written on 17 February and 20 March.

15. A letter from Fieldfisher, the Council's solicitors, of 4 April 2023, was responded to by two consultants in the hospital, Dr. A., and Dr. McG., on 6 April 2023. They are both consultant physicians in the hospital and they explain that Dr. Z. is currently employed as a medical registrar and he currently working with them in the hospital.
16. In the correspondence of 6 April 2023, the two consultants note that they spoke with Dr. Z. on 5 April 2023. They asked him whether the prescription related to a patient who was known to the hospital or was under the care of the hospital at the time. Dr. Z. informed them that the patient in question had come to the hospital for the purpose of obtaining a medical review from Dr. Z. The consultants continue: *“At the time he requested the person to register with the accident and emergency hospital at [the hospital] so she could be an official patient under [the hospital]’s system. This individual said she was unable to do so because of time pressure and that she had to return to Dublin to collect her children from school. Dr. Z. maintains that he performed an examination on the patient and then wrote out a prescription on two separate occasions, 17/02/2023 and 20/03/2023. Therefore, the patient was not an official patient of [the hospital], and the patient was not under the care of any consultant in [the hospital] at the time the prescriptions were issued.”*
17. The letter continues by stating that Dr. Z. informed the consultants that he had previously written prescriptions for the same patient when he was working for the doctors’ online service and that the patient had his mobile number and had contacted



him directly. He also said he was contacted by the pharmacist, Ms. G., who spoke to him about the patient's distressing symptoms. The letter records that Dr Z. informed the pharmacist that he could not issue a prescription because of the restrictions on his registration, and that it was suggested, although it doesn't say by whom, that if the patient became a patient of the hospital, then he would be in a position to issue a prescription, as this would not then contravene his registration restrictions.

- 18.** The letter continues by stating that, according to Dr. Z., there have been a small number of people who have continued to contact him even after he ceased his employment with the DrOnline service. However, he said that these were the only two prescriptions that he had issued since giving his undertakings to the High Court. The letter also records the fact that, according to Dr. Z., he did not issue any other prescriptions and he did not receive any monetary compensation for the two prescriptions at issue. The letter goes on to record their experience of working with Dr. Z. in the hospital. It says that he performed reasonably well in his role as a medical registrar, and this is expanded on in some detail.
- 19.** Mr Lanigan, on behalf of Dr. Z., also replied on 6 April 2023. He says that, having discussed the Fieldfisher letter of 4 April 2023 with Dr. Z., his instructions were that the prescriptions attached to the Fieldfisher letter were issued after physical examination of the patient at the hospital. The letter goes on to state that the patient has a history of back surgery and was complaining of back pain and nerve impingement. The letter says that she had been on a combination of medications and, following Dr Z.'s physical examination, he adjusted those medications for her. It says he was called by the pharmacist, Ms. G, and he verified matters with her. The letter then says, "*Dr. Z. confirms that the patient concerned did not check in through the hospital emergency department, despite his advising her that she needed to do this. As*

*a consequence of this she was not assigned to a consultant of the hospital. She was booked in for an MRI by Dr Z. which has yet to take place."*

20. Mr Lanigan's letter concludes by stating that he had reiterated to Dr. Z. the nature and extent of the undertakings he had given, and he says that he understands that Dr. Z. discussed this particular issue with the consultant at the hospital under whom he is working.
21. Having received that correspondence, Mr. JP McDowell of Fieldfisher made contact with Ms. G. on 6 April 2023. There is a note of a telephone conversation between Mr. McDowell and Ms. G. which is exhibited to Ms Shanley's affidavit. In the note, it is said that Ms. G. stated that the patient attended the pharmacy in February 2023, querying how she might continue to receive prescriptions from Dr. Z., as she understood he may not be able to write scripts via the online service any longer. According to Ms. G., the patient was anxious about this development, as a result of which Ms. G. rang Dr. Z. to clarify the position. Dr Z. told her that he had been requested by the Medical Council not to prescribe online and that the only way he could prescribe for her was by way of physical prescriptions, if she attended the hospital.
22. On the basis of the evidence just summarised, the Council took the view that Dr Z. had clearly breached his undertaking as a result of the following:
  - (1) He treated a patient who was not a patient of the hospital,
  - (2) He prescribed to a person who was not a patient of the hospital,
  - (3) He wrote those prescriptions without consultant supervision, and
  - (4) He was in contact with a patient whom he had treated during his time with the doctors' online service.
23. Ms. Shanley goes on to state in her affidavit that, in light of the substance and nature

of the original complaint and the matters set out in Dr Crowe's affidavit which were before the court on 2 February, it is very significant and extremely concerning that the prescribing undertaken by Dr Z. was for painkillers, opioids and benzodiazepines. Ms. Shanley states that those circumstances compound the seriousness of the respondent's breach of the undertakings. This point was expanded on by Mr. McDowell in submissions to the court this morning, where he referred to some of the notable elements of the prescribing referred to in Dr Crowe's affidavit which I have mentioned earlier on, which gave rise to serious concerns by a number of pharmacists and by the Pharmaceutical Society.

24. It is then said that, given the fact that, in the Council's view, Dr Z. had breached his undertakings, and in light of the circumstances of that breach, the Council was gravely concerned that he would not abide by the undertakings given to the court in the future and the only way to ensure the protection of the public was by a suspension order under s. 60 of the 2007 Act.

### **8. Dr Z's Response**

25. As I have indicated, Dr Z. swore, at very short notice it has to be said, a replying affidavit dated yesterday, 18 April 2023. I should record what is said in that affidavit.
26. Dr. Z. refers to the undertakings which he gave to the court, in particular, those undertakings which I set out earlier in this judgment, namely, undertakings (a), (b) and (c). He says in his affidavit that Mr Lanigan had brought to his attention a letter of 4 April 2023, referring to the issues raised by Ms. G., and that Mr. Lanigan replied to that letter on 6 April 2023. He then says that, after he gave his undertakings to the court on 2 February, he did receive calls and message from patients who he had dealt with while working with the online service, to which he did not respond. Dr. Z. then states that in mid-February 2023 he received a phone call from Ms. G., and that he

told Ms. G. that he had not been responding to patient A's messages. Ms. G. then asked why that was so, enquiring if he was not her doctor anymore. Dr. Z. states that he told Ms. G. that he was subject to an undertaking restricting his practice, and that he could only deal with patient A or any patient if they were a patient of the hospital. Ms G. indicated that she would tell patient A that that was the position. He says that at no time did Ms. G. query the drugs that he had prescribed previously, nor express any concerns to him.

- 27.** Further in his affidavit, he says that, on 16 February 2023, patient A contacted him using a landline number that he did not recognise. She stated that she had spoken with Ms. G. and asked where the doctor was working. He accepts that he advised patient A of the name and address of the hospital that he was working at and advised her that she would have to attend in person at the hospital for him to be able to have any dealings with her. That is undoubtedly a breach of the third undertaking given by Dr. Z. to the court on 2 February 2023. However, it is fairly said by Mr McDowell on behalf of the Council that if that were the only issue then it would be unlikely that the Council would have renewed the s. 60 application, but that is not the only issue that has occurred.
- 28.** Dr. Z. says that on 17 February 2023, patient A did attend the hospital at approximately 1.30 pm and he confirms that he met with her in the Accident and Emergency Department. He examined her, and he states that during the examination he noted a prominent surgical scar on her back, and she gave him a history of surgery to remove a tumour from her back which had taken place in 2022. She indicated that she was still in great pain and, he accepts that, following the examination, he issued the prescription dated 17 February 2023, which is one of the prescriptions exhibited by Ms Shanley. He also accepts that, on that date, patient A did not check-in at the

reception of A&E as would be the norm as she explained that she was in a great hurry to get back to her home county to collect her child from his special school. Dr. Z. states that he was under time pressure due to patient numbers, and he acknowledges he did not insist on her checking in before he saw her. He says that he believes that the prescription that he issued was medically necessary and had been issued only after he had physically examined her.

- 29.** There are a number of unusual aspects of the averments contained in that part of Dr. Z.'s affidavit. However, my function on this application is not to make any definitive findings of fact as to what may or may not have happened. Those issues, if they arise, will be matters to be dealt with in the context of any fitness to practise inquiry that may arise as a result of the complaint against Dr. Z. and any other issues that may have arisen thereafter. It is not my function, therefore, at this stage, to make any definitive findings of fact in relation to this, although I do record that it seems to me to be rather unusual that a patient such as patient A would travel all the way down from her home county to the hospital to meet with Dr Z., to decline an invitation, if one was given, to check in at the reception on the basis that she was in a great hurry to get back and also that Dr Z. himself was under such pressure that he did not insist on her checking in to the hospital. However, it is not my function to resolve those factual issues at this point in time.

### **9. Findings of Breach of Undertakings**

- 30.** It is very clear from that averment that on that occasion (17 February 2023) Dr. Z. breached each of the three undertakings given to the court on 2 February 2023. He did treat a patient on that occasion and that patient was not a patient of the hospital. I do not accept the submission made by Mr Lanigan that treatment of a person **at** the hospital is equivalent to treating a patient **of** the hospital. The patient and Dr Z. did

not take the basic steps of ensuring that the patient was properly registered and checked into the hospital, so that the patient would then become a patient **of** the hospital. I do not accept, therefore, that on that occasion the patient was a patient **of** the hospital. In those circumstances it seems to me that there was a very clear breach of undertaking (a).

- 31.** There was also, in my view, a clear breach of undertaking (b). Dr. Z. was prescribing to a patient who was not a patient of the hospital. He was doing so in circumstances where there was no consultant supervision. That is borne out factually by both the contents of Dr. Z.'s affidavit itself and also by the correspondence from the two consultants of 6 April 2023, which I have mentioned earlier.
- 32.** There is also a clear breach of undertaking (c). This undertaking was for Dr. Z. not to communicate by any means, including electronically, with persons he had issued prescriptions to while contracted by the online service. Undoubtedly in this case, he had issued a prescription, using the notepaper of the online service, to patient A for precisely the same drugs, including the controlled drugs that I have mentioned. He communicated clearly, both by telephone and in person, with that patient. So, on that occasion, on 17 February 2023, there was a clear breach of those three undertakings by Dr Z.
- 33.** The next relevant occasion is 20 March 2023. On that date, Dr. Z. says that he was on-call at the A&E department of the hospital, and while he was on-call, patient A attended the hospital again. We are not told how the arrangements were made on that occasion for patient A to attend the hospital again to seek out Dr. Z. Mr Lanigan says that, on that occasion and on the previous occasion, his instructions are that the patient attended and arranged to have Dr. Z. called. I have no reason to doubt that this happened, and I will proceed on the basis that that is what happened for the purpose

of this hearing. Obviously, the facts may be teased out in due course at any fitness to practise inquiry.

- 34.** Accepting that the patient attended again, and arranged to have Dr Z. called, he does appear to have emerged then from somewhere within the A&E Department and reviewed the patient. It is not clear where that happened, and I have not been told how the review took place or where the review took place. That is particularly surprising in circumstances where the patient again did not check in at reception. It does not appear that Dr. Z. pressed her to do so again on this occasion, but, in any event, she did not check-in. Dr. Z. then says he conducted an in-person review, and he was satisfied that the medication was medically required.
- 35.** It seems to me clear that, on that second occasion, there was also a breach of each of the three undertakings for precisely the same reasons I have given above for the first occasion, 17 February 2023. In fairness, Mr. Lanigan does say that Dr. Z.'s conduct demonstrated weakness by him, and that he should have stood up to the patient. Dr. Z. should have insisted that she check-in to the A&E Department, however he did not. He also ought to have told somebody about this. He did not tell, for example, Mr Lanigan it seems. He did not tell the Medical Council. He did not tell any of the consultants in the hospital of either occasion on which this happened, and, in fact, he said nothing about it to anybody until he was approached by Mr. Lanigan upon receipt of the letter from Fieldfisher dated 4 April 2023.
- 36.** This clearly had an effect, because, a day later, on 5 April 2023, patient A attended again in the hospital. This time it seems she did check-in at reception and was given a hospital number. The respondent did not issue a prescription, but he did book an MRI, and that is the booking of the MRI that is referred to in Mr Lanigan's correspondence of 6 April 2023. Patient A was referred to a pain consultant in another

hospital, and it was explained to me that there is no pain consultant in the hospital in which Dr. Z. was working and that that is why the patient was referred to the other hospital. I emphasise again that it is not my job to make any finding of fact on this matter.

- 37.** On the two occasions on which the drugs were prescribed, 17 February 2023 and 20 March 2023, including the controlled drugs, it seems to me that, for the same reasons on both of those occasions, that there was a clear breach by Dr. Z. of each of the three undertakings (a), (b) and (c) given to the court on 2 February 2023. It may be the case that Dr. Z. did not, as he says in his affidavit, set out intentionally to breach or disregard the undertakings to the court, and it may be that his failure to stand up to patient A, if that is what happened, is an indication of a weakness on his part or an inability properly to exercise his independence as a doctor and to resist the pressure put on him by a patient. I have not formed any definitive finding on the reasons for what took place, but the fact is, in my view, the undertakings were clearly breached by the doctor.
- 38.** I also have to bear in mind that Dr. Z. says that the contact on behalf of patient A was initiated by the pharmacist, Ms. G., and that it was only following the discussion with Ms. G. that patient A was told that she would have to go down to the hospital. However, I infer that the patient was told that she would have to go down to the hospital by the doctor himself from a reading of the affidavit of Dr. Z., Mr. Lanigan's letter, the consultant's letter dated 6 April, and the note of the telephone conversation between Mr. McDowell and Ms. G. herself.
- 39.** I accept that there was contact between patient A and Dr. Z. through Ms. G., however I do not believe that that in any way relieves the doctor of the consequences of the clear breaches of his undertakings and I do note what is said, that he did not receive



any payment for these prescriptions. However, I have not made any findings of fact in relation to this. That is ultimately a matter that will have to be explored at a later stage at any future fitness to practice inquiry.

#### **10. Approach to be taken by the Court**

40. The doctor concludes his affidavit by stating that the court should continue to accept and rely on the undertakings he gave on 2 February 2023, and that he was prepared to reaffirm those. I am afraid I cannot take that course of action. I am satisfied on the evidence that there has been a very clear breach of three of the undertakings given to the court on 2 February 2023, on at least the two occasions the subject of the current application. I have to then consider whether, in those circumstances, I can rely on what Dr. Z. says he will do in the future in relation to those undertakings. I am absolutely satisfied that I cannot rely on those undertakings. Whether it is for the reasons Mr Lanigan mentioned or whether it is for some other reason, Dr. Z. was not prepared to comply with his solemn undertakings to the court and obviously and clearly breached the undertakings he had given. I cannot rely on him to comply with such undertakings in the future.

#### **11. Decision of Medical Council's Application**

41. Having reached that conclusion, it seems to me that I have little alternative but to grant the s. 60 orders sought by the Council.
42. There is no dispute between Mr. McDowell and Mr. Lanigan as to the legal principles that are to be applied in such an application. I adopt, for the purpose of this judgment, the summary of those principles in *Medical Council v. Bukhari* [2022] IEHC 503 and also in my recent judgment in the case of *Medical Council v. A Medical Practitioner* [2023] IEHC 171. These are the principles that are to be applied.
43. I have to apply these principles in my consideration now as to whether I should

impose the s.60 orders. I accept that the paramount consideration is the need to protect the public, which is what s. 60 of the 2007 Act requires and what the case law emphasises, including the judgment of Barron J. in the Supreme Court in *Ó Ceallaigh v An Bord Altranais* [2000] 4 I.R. 54. I accept that this is an order of last resort, to be made only when no other order will serve to protect the public and to protect the community. I have to weigh in the balance the different interests involved, the protection of the public as well as the particular rights which the doctor himself enjoys, including his right to a good name and reputation and his right to earn a livelihood. I accept that s. 60 orders should only be made in exceptional cases.

44. It seems to me that, considering all of those circumstances, I am justified in concluding, and I am persuaded by the Council, that this is such an exceptional case in which the public interest does require that I make these orders. I have to bear in mind the fact that I did afford Dr. Z. an opportunity to address the Medical Council's concerns by undertakings which I accepted on 2 February 2023. Those undertakings have been clearly breached. The circumstances of the breaches, bearing in mind that the precise factual circumstances have to be teased out in the course of an inquiry, give rise to some unusual features as I have mentioned. They will have to be dealt with by way of proper findings and I do not do so today, but I certainly have concerns about what some of what Dr. Z. has said in his affidavit as to what occurred. In any event, even on the basis of what Dr. Z. has said, there is clear evidence of breaches of those undertakings. If a doctor gives undertakings to the court and breaches those undertakings, particularly when dealing with the prescribing of controlled substances in unusual circumstances (as is the case here), then I feel that I really have to give precedence in this case to the protection of the public and I cannot rely on Dr. Z.'s word that he will abide by those undertakings in the future.

45. Both parties accept that the facts of this case are somewhat different to the *Bukhari* case, where there were undertakings given and where there was a breach of those undertakings. Nonetheless, by a very fine margin, and very much on balance, I concluded that, notwithstanding the breach, I would not grant s. 60 orders but would instead accept enhanced undertakings. There are two relevant distinguishing factors, the first and most significant difference between this case and the *Bukhari* case is, as both parties accept, the conduct in question in that case was a road traffic offence, namely conduct not directed to the practise by the doctor, of medicine, but concerned conduct that took place away from the hospital setting. Here, the conduct in question could not be more closely connected to the practise of medicine, and nobody has argued to the contrary. The second difference is that the breach of the undertaking in the *Bukhari* case was actually communicated to the Council and to the court by the respondent's legal representatives. That is not what happened in this case. Dr. Z.'s solicitor was not aware of the breaches, until they were brought to his attention by the Medical Council's solicitors.
46. In those circumstances, and despite Mr Lanigan's helpful submissions and the assistance he has given the court in providing an account of what occurred at very short notice, I feel that I have no alternative, in order to ensure the proper protection of the public which is my fundamental role under s. 60, but to grant the orders sought by the Council on this renewed application. I will, therefore, make the orders sought in the notice of motion issued by the Council.

