

THE HIGH COURT

APPROVED

[2023] IEHC429
[2021 No. 318 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

SYED WAQAS ALI BUKHARI

RESPONDENT

**Ex-Tempore JUDGMENT of Mr. Justice David Barniville, President of the High Court,
delivered on the 15th May, 2023**

1. Introduction

1. This is my judgment in an application from the Medical Council (the “Council”) to revisit orders that I made on 29th July, 2022, in relation to Dr. Bukhari. On that day, I delivered a judgment on an application by the Medical Council for orders under s. 60 of the Medical Practitioners Act 2007 (the “2007 Act”) suspending Dr. Bukhari's registration and prohibiting him from engaging in the practice of medicine, along with various other ancillary orders ([2022] IEHC 503).

2. Brief History of these Proceedings

2. For detailed reasons that were set out in my judgment on that date, I refused to make orders suspending Dr. Bukhari and prohibiting him from engaging in the practice of

medicine on the basis of very extensive undertakings that were offered to the court on behalf of Dr. Bukhari, and which the Council indicated that it would, as a fallback position, be prepared to accept. Those undertakings were confirmed on oath by Dr. Bukhari, and can be summarised as follows:

- (1) To “fully cooperate” with the Council’s Health Committee, and with any medical practitioners nominated by that committee, and also with his own medical practitioners, and to follow all medical advice and to cooperate with any treatment regimes recommended, including those directed in the areas of psychiatry, counselling and narcotics anonymous settings pending the determination of the Council’s Fitness to Practise Inquiry;
- (2) To undergo any regime of testing for substance-intake recommended to him or required by the Health Committee, or any medical practitioners nominated by it, and also by his own medical practitioners, with any modality or frequency recommended or required pending the determination of the Council’s Fitness to Practise Inquiry;
- (3) To authorise his medical practitioners to communicate with the Council and its Health Committee (as may be required) in respect of his care, including the provision of medical reports on his condition, progress, prognosis and test results pending the determination of the Council’s Fitness to Practise Inquiry;
- (4) To follow all health and safety and infection control guidelines in place in his employing hospital;
- (5) To “uphold the law in terms of driving licence and insurance legislation, and the Misuse of Drugs Act”; and
- (6) To:
 - (a) Notify any prospective employer, at least five working days in advance

of taking up employment, of the existence of the complaint under Part 7, and, if applicable, Parts 8 and 9 of the Medical Practitioners Act 2007, and the details of the undertakings at (i) – (v) above; and

(b) Notify the Professional Standards Department of the Medical Council, at least five working days in advance of taking up employment, of the details of any such employer and to consent to the Professional Standards Department of the Medical Council engaging with any such employer regarding the undertakings at (1) – (5) above.

(7) To consent to the Medical Council reflecting on their public-facing register the following:

“The respondent has provided health related voluntary undertakings to the High Court. If you require this information please write to: Professional Standards, Medical Council...or email...”

(8) To consent to the communication of the terms of the undertakings so given at (1) – (7) above to:

- (a) the Council’s Health Committee;
- (b) the Preliminary Proceedings Committee of the Medical Council; and
- (c) such other committee within the Medical Council as may be required.

3. The reason why those undertakings were essential is that, as set out in the judgment ([2022] IEHC 503), there were a number of incidents involving the consumption of alcohol, drugs, and road traffic offences, all of which gave rise to concern on the part of the Council, and which led to the application to suspend Dr. Bukhari.

4. Dr. Bukhari had given undertakings previously to Irvine P. on 20th December, 2021, and it emerged that he had, in fact, breached one of those undertakings. The breach was brought to the attention of the court by Dr. Bukhari's solicitors and counsel, and it

was part of the factual matrix that I had to consider when giving my judgment on 29th July, 2022.

5. In the course of that judgment I relied, to a very material extent, on professional references that Dr. Bukhari provided to the court. Two of those references were provided by a consultant surgeon and colorectal surgeon, Mr. Pawan Rajpal. Dr. Bukhari had exhibited to the first of his affidavits a reference, which bore Mr. Rajpal's name but was not signed by him, purporting to come from Mr. Rajpal dated 2nd December, 2021. In that reference, written on letterhead from the hospital, it said:

"This is to certify that the above-mentioned doctor has been working with me since 2018. Dr. Bukhari is a very capable young man who I found to be very courteous to the medical and nonmedical colleagues. He is an integral part of the surgical team in Cavan. He has very good patient skills and I found his medical knowledge to be satisfactory. He has shown improvement and has recently passed the first part of the membership exam for Royal College of Surgeons. I am aware of the matter which is before the Medical Council and High Court. I state that Dr. Bukhari is a reliable and trustworthy individual. He takes great pride in his work. As well as that, he takes initiative to improve the prognosis of his patients. I do not find him to be a risk to patient safety. He is an excellent team player and always very keen to help out his colleagues. Noting the objections that have been raised in terms of the charges made against Dr. Bukhari regarding substance misuse, I have never found him to be intoxicated at work. As well as that, I have never seen Dr. Bukhari compromise patient's safety. I will be happy to mentor him in future."

That is one of a number of reference letters provided in Dr. Bukhari's first affidavit.

6. In a second replying affidavit sworn by Dr. Bukhari, he exhibited another letter from

Mr. Rajpal dated 15th December, 2021, signed by Mr. Rajpal and which bore details of all of Mr. Rajpal's qualifications. The letter said:

"To whom it may concern, I'm a consultant surgeon ... on every Monday I perform an endoscopy list in one of the hospitals. Therefore, my team at the Cavan site gets the day off to study at home and as per interdepartmental arrangement my services are covered by the junior doctors of my colleagues... and reciprocally my team cover that other consultant's team on a Friday when his team gets time off for study leave at home. This is to certify that Dr. Bukhari has been working in Cavan General Hospital as a surgical registrar since 2018 on various contracts. Since the 12th of July 2021 Dr. Bukhari was assigned on my team as surgical registrar. As per my schedule, I wish to confirm that Dr. Bukhari was off site on 19th July 2021 to study with his colleagues at home. If you require any further information please do not hesitate to contact me."

7. That letter was relevant because one of the incidents occurred on that date in July 2021, and Dr. Bukhari made the case that one of the issues about which the Council was complaining occurred at a time when he was off duty and not working and that, therefore, he did not present any risk to patient safety. Considerable reliance was also placed by Dr. Bukhari at the hearing on the first letter I mentioned, namely the fact that Mr. Rajpal had said that he did not find Dr. Bukhari to be a risk to patient safety.
8. These letters were not the only letters of reference that I had for the purpose of the ruling, but I did comment on both of those letters in the judgment dated 29th July, and I indicated the significance of those letters combined, all of which led me to conclude that, although it was a very finely balanced judgment, the evidence did not establish

that Dr. Bukhari posed a risk to patient safety. I did rely on the reference dated 2nd December, 2021, which purportedly came from Mr. Rajpal in reaching that very finely balanced decision and in leading me to conclude that I would accept undertakings from Dr. Bukhari as opposed to making a s. 60 order.

9. Subsequently, on foot of an application made by Mediahuis, I made orders and delivered a judgment directing that the matter proceed in public and that Dr. Bukhari's name could be made public. The reasons for that decision are set out in a judgment dated 21st December, 2022 ([2022] IEHC 723) (the “*Mediahuis* judgment”).

3. Concerning Issues brought to the Court’s Attention

10. In the meantime, the relevant procedures were progressing as to the setting up of a Fitness to Practise Inquiry in relation to the complaints made against Dr. Bukhari. Meanwhile, Dr. Bukhari was also supposed to be, on foot of his undertakings, engaging with the Health Committee. However, three issues have emerged between the delivery of the *Mediahuis* judgment and today’s application.
11. First, Dr. Bukhari has ceased cooperating with and communicating with the Health Committee around 4th October, 2022. The Health Committee sent a number of communications to him earlier this year trying to set up a meeting in February 2023 to review Dr. Bukhari's case. They did not get any response to any of that correspondence, and, ultimately, it appears that there was a failure by Dr. Bukhari to cooperate with the Health Committee until earlier this month when communication started again.
12. It has also emerged that Dr. Bukhari is, in fact, now back in Pakistan. He did tell Fieldfisher, the solicitors for the Medical Council, that he was in Pakistan for a period, at least, for personal family reasons. He said he is facing some family issues

back home in Pakistan, and he mentions a number of personal matters, and he says all of those have kept him very busy over the past couple of months. He also said, at the conclusion of his email dated 7th May, 2023, that he was willing to give an undertaking to the court that he will not practise medicine in Ireland while the Fitness to Practise proceedings are ongoing. In a further email dated 11th May, 2023, Dr. Bukhari informed Fieldfisher that he was currently in Pakistan due to personal family issues. In yet a further email dated 16th May, 2023, Dr. Bukhari stated that he wanted any assessment or review to take place remotely or through a doctor in Pakistan. This was when he had started to indicate a reengagement with the Health Committee.

Further, the email states:

“Please note that I am willing to give an undertaking that I won’t practise medicine in Ireland while the investigation is ongoing.”

He then asked for details of any support groups which are offered to doctors or healthcare worker who are in similar situation to his, as he says he has not worked for more than a year. He then asked that he be allowed retain his active registration even though he is willing to undertake not to work while Fitness to Practise proceedings are ongoing.

13. Second, in the course of the preparatory stages for the Fitness to Practise proceedings, Fieldfisher received some contact from Mr. Rajpal. Initially that contact came in the form of a voicemail message from Mr. Rajpal on 18th April, 2023, and that was followed up with a telephone call between Ms. Mason of Fieldfisher solicitors and Mr. Rajpal on that same date. Mr. Rajpal indicated that he was ringing in relation to a letter from December 2021 he had received from Fieldfisher which had referred to the undertakings given by Dr. Bukhari to the then-President of the High Court, Irvine P.

14. Mr. Rajpal went on to say he was also ringing about a media article in a Pakistani newspaper dated 21st February, 2023, which Dr. Bukhari had been sharing on social media. Mr. Rajpal indicated that he was very concerned about the misinformation which Dr. Bukhari was giving in Pakistan and he further said that he wished to withdraw the reference that he had previously provided on behalf of Dr. Bukhari, and he exhibited a copy of the social media article.
15. Mr. Rajpal confirmed that, in respect of the two references which I referred to earlier, although issued in his name, Mr. Rajpal's position is that he did not write the first of those references, the one that referred to patient's safety, and so on, dated 2nd December, 2021. He says that he did write the second of the references, dated 15th December, 2021, which referred to Dr. Bukhari being off-site on 19th July, 2021. Since then, Mr. Rajpal has sworn an affidavit in which he has confirmed all of that on affidavit. It is his firm position that he did not issue the first reference dated 2nd December, 2021.
16. The third matter is the reference by Mr. Rajpal to the communication in social media, which was a post by Dr. Bukhari sharing a newspaper article in a newspaper in Pakistan. This was provided by Mr. Rajpal to the Medical Council and, in the course of the application this afternoon, reference was made to a translation of this article which appeared in the *Daily Tarjuman* newspaper in Rahim Yar Khan, which is a city in Pakistan. It refers then to Dr. Bukhari, referring to the fact that he had 10 years of work experience in the Royal College of Surgeons Ireland and is a senior member and surgical registrar in the UK, that he had given his remarkable services in breast, vascular, colorectal, and general surgery in University Hospital Bradford and University Hospital Limerick. However, the article goes on to state that he preferred his native city of Rahim Yar Khan, in his homeland of Pakistan, and he had started

giving his services there. He shared in the interview that he had specialised in laparostomy and endoscopy and had researched various other areas in seven countries, including the USA, the UK, Spain, Germany, France, Italy, and Ireland, but he had come back to Pakistan for his country and in order to serve his people. He further shared that he was back in his country after working with senior surgeons and faculty across the world and that he had established his clinic opposite the hospital in the heart of the city, and he had started giving his services there.

17. All of that was happening, if it was happening, and I cannot make any definitive findings on that issue, at a time when Dr. Bukhari had informed the Council that he had not worked in a year, and he was looking for guidance as to how to provide assistance and support to people in a similar position such as his.

4. Decision

18. These are the three developments which I must now consider in the context of my very finely exercised discretion back in July 2022, to accept undertakings from Dr. Bukhari rather than making orders suspending his registration under s. 60.
19. I did place considerable weight on the references, and I had a certain degree of sympathy for Dr. Bukhari. While I cannot make any definitive findings on any of the three matters that I have mentioned, I think if I had known then what I know now, I would very likely have exercised my discretion in a different way.
20. I have doubts about the reliability of the undertakings given by Dr. Bukhari to the court, in particular his undertaking to cooperate with the Health Committee. There were a significant number of months in which Dr. Bukhari did not cooperate and did not communicate at all with the Health Committee. That itself is very significant and amounts, in my view, to a breach of at least the first of the undertakings that I accepted back in July 2022. I also have, without having to express any concluded

view on it, a reason to be somewhat doubtful, to say the least, about some of the things that Dr. Bukhari has said in response to the application, bearing in mind, first, what he says now in an interview to a Pakistani newspaper about what he is doing at present and second, that there is at least a *prima facie* case that there is a doubt over the authenticity of the references he relied on to establish that he did not pose any risk to patients' safety, to put it no further than that.

- 21.** It seems to me that I must revisit my decision not to suspend Dr. Bukhari's registration. The paramount consideration that the court has to take into account in a case such as this is public safety and, in particular, patient safety. One of the critical things is that, if an undertaking is given to the Council, or, indeed, as in this case, to the court, that the court must be able to rely absolutely on the undertaking. There was previously a breach of an undertaking given by Dr. Bukhari to Irvine P. I was prepared, notwithstanding that breach, to accept further undertakings. It seems, at least on the basis of what I have heard now, that at least one of those undertakings has not been fully complied with. There are also serious issues raised in relation to some of the material that was provided to me in the course of the application and serious issues in relation to some of the information that the Council has been provided with by Dr. Bukhari.
- 22.** I also take into account, in revisiting my decision, of the fact that Dr. Bukhari himself is prepared to give an undertaking not to practise while the Fitness to Practise proceedings are ongoing and that he does not intend to work in Ireland, at least while those proceedings are happening.

5. Conclusion

- 23.** Taking all of those factors together, it seems to me that I must revisit my decision not to suspend his registration and to prohibit him from engaging in the practice of medicine. It does not seem to me that if I were to now make those orders I would in any way be interfering with any constitutional right that Dr. Bukhari has, since he does not intend to practise here for the period of the Fitness to Practise proceedings, in any event.
- 24.** I will now, on the basis of a re-entered application by the Council, make orders suspending Dr. Bukhari's registration and prohibiting him from practising medicine in Ireland and make various other orders. I will do this on the basis that I will ' give liberty to Dr. Bukhari to apply to set aside these orders if he wishes to do so. I think it is only fair that I would provide such liberty.
- 25.** I will make an order suspending Dr. Bukhari's registration on the Council's register and prohibiting him from engaging in the practice of medicine until the steps taken under the provisions governing the Fitness to Practise proceedings of the Medical Council under the 2007 Act are taken. I will make an order giving the Council liberty to communicate the terms of the order to the various entities mentioned there, namely the Minister for Health, the Chief Executive Officer of the HSE, the Chief Executive Officer of the General Medical Council in the United Kingdom, the General Medical Council of Cavan General Hospital, the President of the Pakistan Medical Commission, and the named superintendent in Cavan Garda Station. I will also make an order giving the Council liberty to reflect the order I have now made on the Council's public facing register.
- 26.** I cannot express concluded views on the reference issue, or on Dr. Bukhari apparently working in Pakistan, but I can express a view on the fact that, on the basis of the

correspondence before me, there has at least been a breach of the first undertaking.

27. I am satisfied that I should make an order directing that Dr. Bukhari pay the Council's costs of this re-entered application today.
28. I should also note that at the outset of this application I was informed by counsel who previously acted for Dr. Bukhari that his solicitors have not been able to contact their client for some time and have been unable to obtain instructions from him. On counsel's application, I gave his solicitors liberty to bring an application to come off record in the event that Dr. Bukhari chose to exercise his right to apply to set aside these orders on foot of the liberty to apply I have granted.

A handwritten signature in black ink, consisting of a stylized 'D' followed by a horizontal line that ends in a small hook.