[2018] IEHC 616

THE HIGH COURT

[2018 No. 436 SP]

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

F.C.M.

RESPONDENT

JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 7th day of November, 2018

Introduction

1. The Medical Council ("the Council") seeks an order pursuant to s.60 of the Medical Practitioners Act 2007 ("the Act") suspending the registration of the respondent and prohibiting him from engaging in the practice of medicine until further order.

2. Section 60(2) of the Act provides that such an application "*shall be heard otherwise than in public unless the court considers it appropriate to hear the application in public*". This application was heard in camera but I decided that it would be in the public interest to deliver judgment in open court but without the respondent being identified by name.

3. The Council is authorised to make an application to suspend a doctor if it considers that the suspension is "*necessary to protect the public*" (s.60(1)). That is the basis upon which it brought this application. In my view it was wholly justified in so doing. On the evidence before me I have no hesitation in concluding that the protection of the public requires the respondent to be suspended from the practice of medicine.

The evidence

4. The evidence grounding this application is in the form of an affidavit sworn by Dr. John Barragry who is a consultant physician and member of the Council. He it was who chaired a meeting of the Council which took place on 21st August, 2018 to consider two complaints which had been made against the respondent. The first, dated 10th August, 2018, came from a consultant obstetrician and gynaecologist at the hospital where the respondent had been employed. The second was a joint complaint made by that consultant and another and it was dated 11th August, 2018.

The respondent

5. The respondent was employed at University Maternity Hospital, Limerick as a Senior House Officer from 9th July, 2018. He took up that appointment following interview.

6. The respondent is a Nigerian citizen who graduated in medicine from a Romanian university in 2015. He was never registered to practise medicine in either Nigeria or Romania.

7. In the curriculum vitae which he presented with a view to obtaining employment he described himself as having been a "SHO" in the Royal Infirmary Hospital, Edinburgh from October 2016 until February 2017. At no stage was he registered to practise medicine in the United Kingdom. Although self-described as having been an SHO at that hospital it is quite clear from a letter of 19th October, 2016 from NHS Lothian that he was merely an observer in the Department of Respiratory Medicine. That letter made it clear that he could act only as an observer and was to have no hands-on contact with patients.

8. The respondent applied for registration to the Council and succeeded. He was registered in the general division of the Register on 20th October, 2017.

9. In a document prepared by the respondent headed "The Complete and True History of Events in Ireland" he says that he applied to the Irish College of General Practitioners on 11th November, 2017 but that his application was not processed as he was not able to meet a deadline and so he decided to seek employment in other specialties so as to enable him to have a job and to gain knowledge before the next G.P. application in 2018. He apparently applied for every SHO job on the HSE website but "*kept getting replies that I wasn't shortlisted or don't have the experience*". He said that he got some interviews and during the course of them he asked the interviewing panel for appointment to an observership role when it was made clear to him that he did not have the experience required for the job.

10. On 1st February, 2018 he applied for a Senior House Officer (SHO) appointment in Obstetrics and Gynaecology advertised on the HSE website by the University Maternity Hospital, Limerick. He was shortlisted for interview on 29th March, 2018.

11. The respondent's document describes the interview which was conducted where he said the interviewing panel went through his C.V., asked questions on his experience and jobs in the past. He said that he told the interviewers that he was "*an intern/observer at Medstar Clinic under my professor, volunteered as an SHO at Elias Emergency Hospital and observed as an SHO at the Royal Infirmary, Edinburgh*". He also said that he told them about gaps in his practice at a time when he was waiting for approval of his immigration status. He said that he was questioned on his clinical and medical diagnostic skills on issues such as episiotomy suturing and speculum examination. He said he told the panel he never did such but with guidance would be able to do so. He told the panel that he lacked experience but was willing to learn if given the opportunity.

12. He was placed fourth on a panel and on 4th July, 2018 was called to serve in the hospital with consequences which I will describe presently. He began his employment on the 9th July, 2018.

Employment

13. Within days of taking up his appointment it is clear that issues arose as to his competence and experience. On the 20th July, 2018 Dr. Gerry Burke, the Clinical Director for maternal and child health in the hospital sent an email to the hospital authorities and to the respondent. The email to the respondent read as follows:-

> *"Dear Dr. M.,*
>
> *As you are aware, concern was raised with me today by two consultants about your performance as a Senior House Officer in Obstetrics and Gynaecology at University Maternity Hospital. It was said to me that you are lacking in the basic competencies required of a doctor in the hospital – history taking, taking blood tests, insertion of IV cannulas, how to prescribe drugs and knowledge of and familiarity with the drugs.*
>
> *I met you at my office shortly after the two consultants contacted me about you today along with Mr. Eamon Leahy, Directorate Business Manager. I clarified that you qualified as a doctor in Romania and that you have never worked in any hospital in a paid position as a doctor at any level. You confirmed that you had observer status only in your clinical attachment in Edinburgh for four months (October 2016 - January 2017) – you agreed that you had difficulties in the first week but you stated that you were making progress this week.*
>
> *I explained to you that UMHL is an extremely busy maternity unit and it is not a suitable place for any doctor without basic competencies. I directed that you are to work only under supervision: you are not to take blood or insert IV cannulas or perform any other medical procedures without supervision, you are not to prescribe drugs, you are not to perform internal examinations without supervision.*
>
> *Your work is currently confined to the maternity emergency unit (MEU). You are to communicate about any clinical situation you are involved in with medical and senior midwifery colleagues. Your clinical supervisors include the consultants, the registrars and specialist registrars and the other senior house officers. The medical and midwifery staff will be advised of these restrictions on your clinical practice.*
>
> *I recognise that this is a very difficult and stressful situation, particularly when your family is in Dublin and that you may have little support. I am again advising you that the occupational health service is available to you should you wish to seek its assistance.*
>
> *I understand that you are on annual leave next week. Therefore, your performance will be assessed at the end of the following week. The assessment will be based on the opinions of your supervisors and co-workers.*
>
> *What was said at the meeting that we had with you this morning constitutes an oral warning. This correspondence is the record of the oral warning that will be placed in your file. Under disciplinary procedures, you have the right to appeal the oral warning to a higher level. As I am clinical director for maternal and child health and currently acting group chief clinical director, the next senior officer is the group CEO.*
>
> *This correspondence will be copied to the HR department and the consultants."*

14. In writing to the hospital authorities and notifying other members of staff Dr. Burke in an email of the same date said this:-

> *"Concerns have been raised with me by two consultants about the performance of an SHO, Dr. M., and I have issued an oral warning after the matters were discussed with him today. Mr. Eamon Leahy attended the meeting.*
>
> *I should be grateful if you could review the notes of the interview. It turns out that Dr. M. never worked before in any paid capacity in any hospital anywhere. It doesn't seem to be the case that this was established at the interview.*
>
> *I have checked the Medical Council Register and he has general registration. He said he is not registered in any other country and did not receive GMC registration in the U.K. Does this need to be looked into?*
>
> *The letter about the oral warning is being issued today and is appended below."*

15. It is clear that matters did not improve as a result of which the two complaints of 10th and 11th August 2018 were made to the Medical Council.

The first complaint

16. The first complaint came from Dr. Burke, who in addition to being clinical director for maternal and child health in the UL hospitals group, is himself a consultant obstetrician and gynaecologist.

17. Having identified himself and his position Dr. Burke wrote as follows:-

> *"This complaint is made under the heading of poor professional performance (a failure by the doctor to meet the standards of competence, whether in knowledge and skill, the application of knowledge and skill or both, that can reasonably be expected of doctors practising the kind of medicine practised by the doctor).*
>
> *Dr. M. was employed as an SHO in Obstetrics and Gynaecology at University Maternity Hospital, Limerick following an interview in June. He graduated from a medical school in Romania in June 2015. He has never worked in any paid capacity as a doctor before this. He was never registered as a doctor in Romania, the U.K. (where he did an attachment that he described on his C.V. as SHO) or in Nigeria, of which he is a citizen.*
>
> *Following serious concerns expressed by NCHD's and consultant staff about his competence in basic medical tasks (taking a history, taking blood, inserting an IV line) and his general medical knowledge, including of basic drugs such as Heparin, Dr. M. was removed from clinical duties except under direct supervision by another doctor.*
>
> *Dr. Mendinaro Imcha, Consultant Obstetrician and Gynaecologist at University Maternity Hospital, Limerick, and I interviewed Dr. M. today to ass (sic) his medical knowledge, using questions that would be used in a final medical examination for a pass/fail candidate.*
>
> *Dr. M. did not know of any causes of anaemia other than iron deficiency; he did not know the causes of acute dyspnoea*

in pregnancy other than embolus; he said a pulmonary embolus would be treated with aspirin; he did not know the basic management of eclampsia and he said the management would be conservative at 30 weeks; he did not know the full list of blood tests to take; he struggled to list the caused (sic) of a post-partum haemorrhage.

He was unable to recall exactly the length of his various attachments during his final two years in medical school and he could not specify what clinics he had attended or the names of the medical specialities he had been attached to. He said the obstetrics consultants were never there and that they had to learn by going in at night and observing. He had never been taught how to examine a pregnant abdomen other than by observing a doctor doing it. His recollection of the details of the medical school programme, which he had completed just three years ago, was very patchy.

It was clear to both Dr. Imcha, who will be writing to you to support this complaint, and me that Dr. M. does not meet even the most basic standards of competence that are reasonably expected of doctors practising at this very junior level."

The second complaint

18. The second complaint came from Dr. Imcha and was again based on the grounds of poor professional competence. It pointed out that following his employment on 9th July, 2018 the multidisciplinary team members (SHO's, registrars, midwives and midwifery manager) started expressing serious concerns about his clinical competencies, including basic skills such as taking bloods, putting IV access, charting medications, taking basic history or communication with patients. It recorded that on 18th July the respondent was taken off clinical activities and assigned to the maternity emergency unit as an attachment so that he could learn under supervision. It recorded the oral warning that had been given and the assessment made by Dr. Burke and Dr. Imcha. In that regard the complaint reads:-

"Dr. M. informed us that after his graduation in Romania in 2015, he moved to the U.K. where he did a clinical attachment. However, in his C.V. he had written that he worked as an SHO in the U.K. and reiterated the same during his interview in June 2018. Even though Dr. M. had completed his medical school as recently as 2015, he struggled to give details of the final two years of medical school. He was unable to give detailed information on the specialities of clinics and the frequencies of these clinics based on the clinical postings he had been assigned to as well as the duration of such assignments. He said that he was never taught how to examine a pregnant woman and the consultants in the medical school were never there to teach. He also added that the students were not allowed to touch patients and that he had to go in at night to observe and learn. He confirmed that he is not registered with the Medical Councils of Nigeria, of which he is a native, Romania, or in the U.K.

Dr. M.'s performance has been deeply concerning. During the assessment, he was not able to list the causes of anaemia except for iron deficiency. He did not know the differential diagnosis of shortness of breath in pregnancy and said the management of pulmonary embolism is aspirin. He also said that the management of eclampsia at 30 weeks would be conservative management. He was finding it difficult to give causes of post-partum haemorrhage. During his time at the MEU, the supervising SPR found him give a diagnosis of implantation bleed to a patient of 35 weeks' gestation with placenta praevia.

Following this assessment, Dr. Burke and I were clear that Dr. M. did not have the basic knowledge, standard, and competency to work as an SHO."

19. This complaint was accompanied by a number of communications concerning observations and complaints made by other junior hospital doctors. One dated 19th July, 2018 read:-

"The SHO's are unhappy with the current situation. They have all witnessed wild clinical 'assessments' (zero history or examination of patients) and decisions and they feel uncomfortable with some of his clinical decisions while they are there, and yet, they are all swamped themselves trying to make their own way in a new place. The reg rota from next week cannot spare people as much any more to send a reg down so I was wondering if the consultant on call might throw an eye on Dr. M. in MEU so that the appropriate level is monitoring him in order to make a decision going forward? Finally, even if Dr. M. stays on, would it be possible to get another SHO?"

20. Following receipt of these complaints the Council on 15th August, 2018 wrote to the respondent informing him of them, furnished him with documentation and informed him that a meeting of the Council would take place on 21st August at 11.00am. He was invited to attend that meeting and did so.

The meeting of 21st August, 2018

21. The meeting took place and the respondent was present and made a submission both orally and in writing. He was not legally represented. His written submission consisted of a lengthy document which I have already referred to at para. 9 of this judgment was entitled "The Complete and True History of Events in Ireland". Both in that document and in his oral submission to the Council he made it clear that when interviewed he told the interviewing panel that he lacked experience and he referred to the interview notes which were before the Medical Council in that regard. He also said that although he wrote 'SHO' in respect of the experience in the United Kingdom he made it clear to the interview panel that it was an observership which he held.

22. The respondent offered various explanations to the Council. For example, in respect of the interview conducted by Drs. Burke and Imcha to assess his medical knowledge he stated that "*This caught me off guard as I thought they were having the meeting just to restore my duties. I was so nervous and anxious that I was panting during the questioning, I was in shock and I blanked in an overwhelming situation*". This does not explain the many shortcomings observed by medical and nursing colleagues from the time he began work.

23. The respondent also made reference to what took place during his original job interview. He said:-

"They complained that I didn't tell them that I did an observership and I wrote SHO. So in the interview, and there is an interview report … it clearly states that I told them about my … experience. I told them that I was an observer … I put down SHO on my CV … in Romania we don't use the SHO classification … it denotes from my degree … and this is why I put it, but I explained to them orally in the interview …

I lack experience … I have some gaps in my training, but it is not on my own intention, but I was still studying and

obviously going to courses and conferences to keep my medical knowledge up to date".

24. Having considered the matter and having obtained legal advice from the legal assessor the Council decided to make this application.

25. The Chairperson of the Council gave the reasons for so doing as follows:-

> *"The Council 'has concluded that it is necessary in order to protect the public to apply to the High Court for an order suspending Dr. M.'s registration until further steps are taken under the Medical Practitioners Act of 2007.*
>
> *The Council's reasons for this decision are as follows:-*
>
> > *i. The level of competence displayed by Dr. M. in his work as a senior house officer at UMHL is such that there is a significant risk to the public safety if he were to continue to practise as an SHO or in other areas of medical practice.*
> >
> > *ii. Council noted Dr. M.'s very frank admission of having virtually no prior experience of practice since he qualified as a doctor, and his statement to the effect that he made this clear to his employers at UMHL at interview prior to his appointment.*
> >
> > *iii. The Council has carefully noted the criterion in the O'Ceallaigh case to the effect that in the event of an adverse finding following a Fitness to Practise Inquiry, the likely sanction would be erasure either permanently or for a fixed period of time.*
> >
> > *iv. The Council must point out that in general terms following an adverse finding based on lack of competence, the sanction is more likely to be a condition requiring retraining or rehabilitation of the doctor with appropriate restrictions on practice as necessary.*
>
> *The Council considered it appropriate to bring this observation to the notice of the court in the event that the court considers an order other than suspension of registration under s.60(3)(a) of the Medical Practitioners Act 2007."*

This Litigation

26. The matter first came before Twomey J. on 24th August, 2018 when an undertaking was given by the respondent that he would not practise medicine between then and 8th October, 2018 inclusive.

27. On 29th August, 2018 the respondent wrote to the solicitors for the applicants saying:-

> *"I will not be contesting the proceedings on 8th October, 2018, but I will (sic) like to adjourn generally with liberty to re-enter and I give an undertaking to do any required courses."*

Following correspondence from the Council's solicitors he wrote on 25th September, 2018 as follows:-

> *"I refer to the above matter and your letter dated 13th September received by email. I note from your letter that the Medical Council will not be consenting to adjourn the proceedings on 8th October.*
>
> *I therefore confirm to clarify your letter that (a) I will not be present in person on 8th October, (b) I consent to your motion, in para. 2b – 2e of their special summons. (c) Regard to 2(f) I wish to make it known that I am not in a position to accept costs due to my financial position. Also, in accepting above I have saved court time in costs instead of a long process."*

Whilst the respondent consented to the bulk of the reliefs sought he did not consent to the relief sought at 2a which was an order that he be suspended from practice.

28. The respondent did not appear in court on 8th October nor did he file any affidavit evidence.

29. I concluded that the public interest required that he should be suspended from practice and I so ordered. I also directed that he be prohibited from engaging in the practice of medicine and gave liberty to notify the relevant authorities of the making of the order.

30. I decided to deliver a written judgment in the matter in open court because I believe there is a public interest element arising from this case.

Concerns

31. A marking sheet from the recruitment interview of the respondent was put in evidence before the Council and this court. The respondent received 55 out of a possible 100 marks in respect of his clinical medical and diagnostic skills (40 marks is a pass). He received 60 marks out of a possible 100 in respect of his capability to fulfil the functions of the post. Examples of these were given on the form as "*work management, case load management, decision-making, initiative, motivation, audit, research, etc*.". He received 70 out of a possible 100 marks for communication and interpersonal skills and 10 marks in respect of continuing professional development. He thus received 195 out of a possible 325 marks. The interviewing panel by way of additional comments stated "*short of experience but eager to work and learn and keen on career in O and G*".

32. These marks and comments and the interview process which led to them must give rise to serious questions.

33. How could the interview panel come to the conclusion that the respondent was "short on experience" when he had none at all?

34. How could he have been awarded 55 out of 100 marks in respect of clinical medical and diagnostic skills when his lack of those very skills was so obvious within days of his coming to work in the hospital? Surely the interview process ought to have elicited the sort of information which Doctors Burke and Imcha obtained when they asked him questions that would be used in a final medical examination for a pass/fail candidate. If this interview process was worth its salt it would have demonstrated his lack of basic medical

knowledge. It would also have demonstrated that a candidate for appointment as an SHO in an obstetrics and gynaecological department did not know any cause of anaemia other than iron deficiency, did not know about the basic management of eclampsia and thought that a pulmonary embolus should be treated with aspirin.

35. If this case were an isolated one it might be regarded as an aberration in an otherwise sound recruitment process. Unfortunately, I have encountered other cases where registered medical practitioners with little knowledge of the basics of medicine are nonetheless recruited to work in the hospitals of this State. The use of such defective interview and recruitment procedures has given rise to the employment of persons who are wholly unsuitable for appointment and an obvious danger to patients in those hospitals.

36. In the present case I note that the interview panel described the respondent as "*eager to work and learn"*. But learn at whose expense? Surely it should not be at the expense of unwitting patients who are entitled to expect that when they enter hospital they will be dealt with by registered medical practitioners who are not, to quote Dr. Burke, "*lacking in the basic competencies required of a doctor in the hospital*".

37. It was because of my concerns in relation to these matters that I decided to deliver judgment in open court. I hope that the relevant authorities who are involved in the recruitment of junior hospital doctors review the recruitment procedures and in particular the conduct of interviews so as to ensure that what has happened in this case will not recur.

Section 60
38. As I have stated, s.60(1) of the Act gives the Council the entitlement to apply to this court for an order to suspend the registration of a registered medical practitioner if it considers that the suspension is necessary to protect the public.

39. On such an application the court may make any order it considers appropriate, including an order directing the Council to suspend the registration and give to the Council any direction that it considers appropriate.

40. In *O'Ceallaigh v. An Bord Altranais* [2000 4 I.R. 54] Barron J. identified three matters to be considered (in that case by the Nursing Board) to determine whether the matter is sufficiently urgent to apply to the court under an analogous procedure to that prescribed under the Act. The three matters identified were:

> 1) the nature of the complaint upon which the application for an inquiry is based,
>
> 2) the apparent strength of the case against the respondent, and
>
> 3) whether in the event of an adverse finding the appropriate sanction would be to strike off the practitioner either permanently or for a definite period.

41. Insofar as these three matters are concerned it cannot be gainsaid but that the allegations against the respondent here are of a most serious type. They allege that he is lacking in basic medical knowledge and competence.

42. The case against the respondent is a strong one and the contemporaneous communications demonstrate serious concerns as to his medical abilities and knowledge on the part of his junior hospital doctor colleagues as well as consultants in the relevant department. The respondent chose not to file any affidavit evidence in refutation of those allegations nor did he appear before the court.

43. I note that in relation to the third matter the Council has pointed out that "*in general terms following an adverse finding being based on lack of competence, the sanction is more likely to be a condition requiring retraining or rehabilitation of the doctor with appropriate restrictions on practice as necessary*".

44. I take full account of that statement from the Council. Given the evidence in this case it would perhaps be difficult to fashion a series of conditions being attached to the respondent's registration short of requiring him to repeat every examination prescribed in a medical final. Even if the ultimate outcome of the hearing before the Fitness to Practise Committee results in conditional registration and cessation from practice until those conditions are fulfilled rather than a strike-off, I am quite satisfied that between now and the determination of the Fitness to Practise Committee inquiry the public interest demands that the respondent not be permitted to practise medicine.

Disposal
45. I direct that the registration of the respondent's name in the Register of Medical Practitioners maintained by the Council pursuant to the Act be suspended until steps or further steps are taken under Part 7, and if applicable, Parts 8 and 9 of the Act. I also continue the prohibition on the respondent from engaging in the practice of medicine until such steps or further steps are taken.

46. The Council is at liberty to communicate the terms of this order to (1) the Minister for Health, and (2) the acting Chief Executive of the Health Service Executive.

47. I also direct that this judgment be sent to the said Minister and acting Chief Executive.