THE HIGH COURT

[2021] IEHC 252

RECORD NO.: 2021/26 MCA

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

BETWEEN/

MEDICAL COUNCIL

APPLICANT

AND

DR. GERARD WATERS

RESPONDENT

JUDGMENT of Ms. Justice Mary Irvine, President of the High Court delivered on the 2nd day of March, 2021

1. This is an application brought by the Medical Council ("the Council") to suspend the Respondent's registration from the Register of Medical Practitioners pursuant to s. 60 of the Medical Practitioners Act 2007 ("the 2007 Act"). A s. 60 suspension is an interim suspension pending the conclusion of any disciplinary proceedings instigated against a medical practitioner or pending further order by this court.

2. Section 60(2) of the 2007 Act provides that an application pursuant to s. 60 be heard otherwise than in public, meaning that the hearing before me took place *in camera* and, having regard to the present circumstances, remotely.

Background

3. The Respondent is a general practitioner. On 16th September, 2020, the Council received a complaint from one of the Respondent's patients. The complaint related to a consultation the complainant had had earlier that same day with the Respondent. It detailed primarily certain representations and actions taken by the Respondent regarding the Covid-19 pandemic that at that time and currently continues to affect Ireland and the world. In his complaint, the patient states that on 14th September, 2020 he had made an enquiry of the Respondent's surgery as to whether he could be referred to testing for Covid-19. He was informed by the receptionist that the Respondent could not refer patients for Covid-19 testing because the surgery did not have a computerised system to facilitate such referrals. Having attended a different doctor who found that the complainant did not exhibit the symptoms typical for Covid-19, but with his symptoms now feeling like a chest infection, on 16th September, 2020 he again telephoned the Respondent's surgery and arranged an appointment.

4. While waiting in the waiting area, the complainant noticed a photocopied pamphlet with the title "No pandemic killing us". Having begun his consultation with the Respondent, the complainant says he "was treated to a barrage of nonsense about the 'hoax that is Covid-19'" and that "the state and the government are scamming the people" Furthermore, the Respondent was said to have advised the complainant that the wearing of masks was causing illness. Additionally, the Respondent handed him photocopied pages with death numbers, from Ireland and Italy, bar charts showing the ages of victims and all in an effort to convince him that Covid-19 is a hoax. The complainant also says that the Respondent made the claim that people who are confirmed as having died of Covid-19 have not actually died from that disease and those

that do were “terribly old”. In his complaint, the patient further details that the Respondent suggested that his symptoms were caused by the mask he was wearing.

5. I have set out the complaint in full below:

> “I have felt unwell in recent days. I contacted [the Respondent’s] surgery on Monday 14/07/20 to request a Covid test as I work with a vulnerable population in [ ] and am unable to return to work while sick. Since [ ] I have attended [the Respondent’s] surgery on two previous occasions. I was informed by the secretary that they do not have a computerised system so are unable to refer patients for covid [sic] testing. I was instructed to find another GP who would do it for me. I found this to be quite strange. I subsequently contacted my sons [sic] GP who was kind enough to give me a telephone consultation which found that I did not exhibit the symptoms of Covid and that I should be OK.
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> Two days later on the 16/09/20 I felt as though I had developed a chest infection of sorts. Knowing my own body as I do, I felt it best to get the opinion of a medical professional so I called [the Respondent’s] surgery to arrange for a consultation. This was facilitated and I was asked to attend the clinic at 15.30. While waiting in the surgery waiting room for my consultation, I found it peculiar to see photocopied details of death numbers in Ireland in recent years with the title 'No pandemic killing us'. I naively assumed that this was posted by a disgruntled patient without the knowledge of the staff and the Doctor in the surgery. How wrong was I!
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> As soon as I entered [the Respondent’s] surgery, wearing my mask I may add, I was treated to a barrage of nonsense about the ' hoax that is Covid-19 ', how the state and the government are scamming the people, and how masks are

causing illness. It was the most uncomfortable experience I have sat through many years [sic]. [The Respondent] handed me photocopied pages with death numbers, from Ireland and Italy, bar charts showing ages of victims and all this was provided to support his claims that Covid-19 is a hoax. I got the impression that each and every patient who sat in the chair I was currently in was treated to the same spiel.

When I jokingly tried to suggest that the Doctor was sceptical about Covid-19 I was left in no doubt as to his opinions on these matters. [The Respondent] stated that people weren't really dying of Covid and those that were [were] terribly old. He stated that the numbers of deaths are being cooked stating that the cause of deaths in most cases is not covid [sic] but because the victims have covid [sic] in their throat or nasal passage that these are added to the death toll. These opinions are not unlike some of the opinions being shared by some, in my opinion, terribly irresponsible people online. [The Respondent] even suggested, my illness was as a result of ' that silly f **ing thing ' I was wearing (as he pointed to my mask). His behaviour was beyond inappropriate. All I could hope for was that he would give me a check up and let me get out of there.

The checkup consisted of a brief check of my chest. [The Respondent] concluded that I had tracheitis and told it probably wasn't covid [sic] and even if it was, its ' inconsequential anyway '. I was then dismissed with a prescription for the tracheitis. I left the surgery only to meet another patient on the way in to meet [the Respondent] wearing a mask. I thought to myself that patient is in for the same treatment I just received.

I have seen similar opinions aired online by groups and people who I can only describe at best as irresponsible and at worst as dangerous. Of course when it comes to matters of medical nature I bow to the superior knowledge of any person who has studied and practices medicine for a living but I have seen far more medical professionals from the Chief Medical Officer to high profile medical professionals to [ ] who are working on the frontline share the complete opposite opinion to that of [the Respondent].

I believe his behaviour is very dangerous as he is openly undermining the messages being delivered by public health professionals who are trying their best to manage the current public health emergency. [The Respondent] I fear is influencing patients of his to become sceptical about the severity of this situation and I would worry about those who are vulnerable. I, as a relatively fit [ ] would probably have little to worry about from picking up Covid however I fear [the Respondent] has patients who are in vulnerable categories and I would worry for those patients who take his opinions at face value due to his status as medical professional.

I have thought long and hard about lodging this complaint. I would hope that others have surely met with [the Respondent] and that I am not the first to take such action. In case I am the first, I feel it is only right and fair that I lodge this complaint and I can only hope that it does not fall on deaf ears and that the patients of [the Respondent] who are in vulnerable categories can be protected going forward."

6. Having been informed of the complaint, the Respondent acknowledged receipt of same by email dated 8th October, 2020 and sent a detailed response on 30th October, 2020. In his

response, the Respondent admits having set out his point of view on Covid-19 to the complainant but maintains that he did so in a reasoned manner. Primarily though, his response deals with his views regarding Covid-19, the government's handling of the pandemic, the information disseminated by public health officials and the research he carried out into Covid-19. In particular, he states that the measures taken by the government have resulted in more harm than good, specifically having regard to psychological damage as a result of the lockdowns. He supposes that the government has instigated "media propaganda" and that the official death toll reflects an inflated rate of mortality ascribed to Covid-19. He seeks to support the contentions by providing, *inter alia*, some statistics from America and Italy which he uncovered as part of his research.

7. The Respondent further details communications he has had with public health officials wherein he queried, in particular, concerns he has regarding the carrying out of post-mortem examinations upon those that have died from Covid-19. He then makes various claims regarding a link between what he describes as "propaganda" perpetuated by governments and the media in relation to Covid-19 being used to "front run" an economic collapse in the Western world.

8. Lastly, the Respondent states that, if he is wrong in relation to his assertions regarding Covid-19, his negative impact will be miniscule. The Respondent states that he never broadcasted his views on the internet or stood on a platform speaking to the public. He, so he says, only communicated the truth to his patients who seek his professional opinion.

9. The Respondent enclosed a number of documents with his letter of 30 October 2020 detailing his engagement with colleagues and a number of articles that he says support his contentions.

10. The letter reads as follows in full:-

"Dear Sabina,

At the outset I wish to take issue with the reported tone and tenor of the consultation on 16th September. As there is no witness or recording of the event the use of words in the complaint and my response mush be used to judge what is most likely. I was speaking to a fee-paying patient who I took to be intelligent and educated, as he had previously informed me that he was [ ].

I was departing from popular understanding, media onslaught. Government, Department of Health, and ICGP. I have more to lose than gain, I as a doctor consider myself a professional persuader and information purveyor. I have conducted an excess of a quarter of a million consultation over forty three years, it seems unreasonable that I would launch into a barrage of information as suggested by [the complainant]. I acknowledge that I did present the information that I believe to be true on the Covid 19 Pandemic in the concise and reasoned manner, not as aggressive fashion stated by [the complainant]. Due to the fact that I don't remember the exact extent of the information I imparted to [the complainant], I have enclosed most of the talking points and facts I shared. If there is anything, I left out I will gladly elucidate it for him.

It is unfortunate that this [ ] who claims to have jokingly, in course of the conversation, introduces the topic of masks, and yet wishes to take on the mantel of victim. He claims to be traumatized and psychologically upset at a person having a difference of opinion and he clearly wishes to demonise me because of my use of a naughty word in my presentation as overly aggressive.

In 1977, when I was conferred with my medical degree I took seriously the concept of the Hippocratic oath FIRST DO NOT HARM I resolved then to stand

up against any medical professional, association, or government who I felt to be doing harm to my patients or to the people of the country in general. I firmly believe that the Covid 19 lockdown has caused considerably more damage to patients and the people of the country than Covid 19 virus, which is now generally accepted worldwide to have a pathogenicity and mortality similar to a winter flu.

I need hardly point out that in Ireland 4.8 million people have been directly affected by the Covid 19 lockdown and as explained by Professor Mary Horgan of infectious disease Cork University on and ICGP Covid 19 webinar, psychological sequel are the mostly likely long term effect of the Covid 19 pandemic.

From my experience of my patients on the front line since March 2020,1 estimate that between one and ten per cent of the Irish population have suffered from a serious traumatic stress disorder, depression and suicidal ideation as a direct results of the government instigated media propaganda and lockdown, which works out at between 48,000 and 480,000 people of this country. This must be seen as a national tragedy, if not a massive crime against the Irish people, perhaps the worst since the great famine which was committed by the British government. It is accepted that a one percent increase in unemployment

leads to a one percent increase in suicide. So, we can expect suicides to increase as a direct effect of the lockdown.

I believe that in the absence of post mortem examination on all Covid 19 deaths and the demonstration of SARS COV2 pathological evidence in the lungs, the

diagnosis of Covid 19 death is impossible in the cohort of very elderly sick patients. I have consistently called for post mortem examination on all Covid

19 deaths, to the Department of Health and 1CGP. I have on a number of occasions emailed Dr. David Hanlon advisor to Leo Varadkar, and Dr. Brian Osbourne vice chairman of the ICGP Covid expert panel, and the ICGP question line, on Covid 19.1 as a working GP have certified many people dead in their homes and in nursing homes over a forty year period, and in discussion with very experienced colleagues accepted that a post mortem is almost never called for unless there is a reason to suspect misadventure, which is almost never the case. We now conclude that a definite case of death is impossible in the absence of a post mortem examination.

During a flu epidemic in the number of deaths is very difficult to assess in elderly people, but there is little doubt that influenza does in fact cause some deaths, undeterminable as that is. We know that certification of cause of such deaths is on a best guess basis. It is impossible to definitively differentiate between people dying 'with related' to, as Dr Tony Holohan refers to the Covid 19 related deaths, as opposed to 'of flu or Covid 19 in the absence of a post mortem examination. Unfortunately, the media propaganda machine deliberately ignores the concept of relationship to, rather than cause of, they refer to as Covid 19 deaths, spreading fear and terror in our population. I have pointed out that the principal difference between elderly deaths and younger deaths is the presence of absence of a post mortem examination. This I suspect is the true reason why very few young people are dying from Covid 19 throughout the world.

In September 2020, an announcement from the CDC the American government centre for disease control in Atlanta state that only 6% of certified Covid 19 deaths in America had Covid 19 as the sole cause of death, the other 94% had on average 2.6 co-morbid conditions that could have caused these deaths. If this figure was applicable to Irish Covid 19 deaths, we would see that approximately 100 people had a sole Covid 19 cause of death. That is the number of elderly people who die every day in Ireland. This reality of approximately 33,000 people dying every year in Ireland has never been mentioned by Dr. Holohan and his team to try to temper the fear and hysteria of the people. A little honest perspective is what I called for, and endeavour [sic] to communicate to my patients. There had not been any increase in additional deaths in Ireland on previous years due to the Covid 19 virus. This should be widely published by the Department of Health and the ICGP. The situation is similar to the United States of America where the reality of 2.8 million people die every year.

In February and March 2020,1 like everyone else heard the Chinse government and WHO expressing the view that the Corona virus which would appear to have originated in the Wuhan Provence due to the eating of bats or pangolins was not a major threat to the public health of the region or the world in general. Six days after the World Economic forum met in Davos on 21st to 24th of January 2020 in Northern Switzerland. The WHO declared that the virus was a major threat to public health.

Soon after we began to see and explosion of news emanating from Italy on the horrendous carnage on the population. I felt as a doctor I had a responsibility to research the topic and found that Italy has a population of 60.4 million with an

overall aged population and a death rate of 10.6/1000.1 found that children were not being affected and that the age of Covid 19 death in Italy was an average 81.6 meaning that the 50% of people dying of Covid 19 were above the expected lift expectancy of 81 years. A quick calculation demonstrated that the average number of deaths per year was 630,000 per year 57,000 a month, yet the press screaming hysterically over 3,000 deaths in the first number of weeks. This worked out at an increase of approximately 5.2% deaths over a month of the people 50% of whom were above the life expectancy.

We saw pictures of rows of coffins storing bodies on ice rinks and army trucks transporting coffins. Italy has an army of 140,000, with 40,000 in the airforce. Even if the illness was principally in the Lombardy region, the increases were still in the area where patient could be airlifted to other areas for treatment. The average age of the patient who died was published as 81.6 and no children had died in the first four months, according to my research. Later figures suggest .04% children died, a retrospective addition.

I research one widely quoted study from a prominent retired urologist in Italy, Dr Gallion (I think) who studied the epidemic, he states amid the copious graphs, facts and figures of death and morbidities that some medical personnel contracted Covid 19 and some died. A jarring statement in a highly regarded scientific paper published in the AIM. (I am unable to trace this paper at present, but will given more time) This statement using the words some in relation to his medical colleagues suggested to me that there was an attempted obfuscate and an agenda other than presentation of facts.

The above information set in motion a suspicion that a propaganda machine worldwide was in action. The lockdown was imposed in Ireland in the third week of March and I became aware of a panic and distress spreading among the more impressionable and naïve patients who contacted me looking for Covid 19 tests before there was an established method of testing. I endeavoured to explain on the many phone conversations I took, informing them on the figures coming out of Italy and stated this media propaganda was a lie, a hoax that I stand over to this day.

One such patient decided to report me to the Medical Council who on the basis of this anonymous compliant instructed a solicitor to ring me. I must admit I found this very unsettling and shocking. I felt threatened in relation to my freedom of speech. The solicitor also mentioned the protocol of the HSE. I endeavoured to explain to the solicitor, (person to person in my words) my reservations and information on Italian deaths about the very dangerous situation I saw developing both from a civil, liberties and medical delays and psychological standpoint. She was not interested in my view and contrary to her brief from the medical council and their expressed mission statement to support doctors, she did nothing to attempt correct my error of thinking. A simple phone call to the ICGP, my Academic body to inform them of my error in thinking and explanation from them to correct my thinking was never ATTEMPTED. The making of a phone call was clearly withing her competence and brief. As I have never had a conversation with a solicitor for the Medica! Council and could only take this to be a threat to take me to the high court and subsequent strike off.

The question must be asked, if I was in error of thinking and a danger to public health does the Medical Council have clean hands? It was clearly within the competence of the solicitor to make a phone call to the ICGP my academic body responsible for my education and knowledge.

Very soon after the lockdown I began communication with Dr. David Hanlon in his position as advisor to the Department of Health and Leo Varadkar, and in his position on the expert panel on Covid 19 ICGP. I also communicated with Dr, Brian Osbourne Vice Chairman of expert panel on Covid 19 and the question section of the ICGP webinar. I also communicated with Dr. Brendan O'Shea, Professor of general practice Trinity College. In my many email communication, I asked what I felt were pertinent questions in relation to the lockdown and asked during the very good weather of April and May that the holiday homes, seaside's and caravan parks be opened as to expose children and adults to the sunlight and vitamin D and help with social distancing.

I also asked why post mortem examination were not being performed on all Covid 19 deaths, as there was approximately one hundred and forty pathologists registered in the country, many of whom were sitting at home doing nothing. A fee of 300 euro per post mortem would have paid for all post mortems for less than one million euro, a paltry sum in the context of at least two billion spent on Covid 19 lockdown.

I argued that if the epidemic was serious enough to close the economy and impose draconian laws, where most people believed that it was a crime to leave their home, as many were stopped, asked their name and address, where they were going, and if their answers did not satisfy the garda, they were turned back

and sent home. It would be wordy of establishing a definitive cause of death on every patient.

I have a number of questions which I submitted to the ICGP, my academic body, please see enclosed letter to Dr. Hanlon. Why were post mortem examination not carried out? Was it because the authorities knew that most Covid 19 related deaths (Dr. Anthony Holohan descriptions) were not caused by Covid 19 but were peripheral to the cause of death? I should point out that I have asked the ICGP to explain why very few young children were not dying of Covid 19 that the disease is in the words of Dr. David Hanlon on a Covid 19 webinar that it was very minor illness in children. During the first full lockdown a paediatrician during an ICGP Covid 19 webinar stated that no children have been admitted to hospital because of Covid 19 and that there we no deaths. There were as explained by a paediatrician two cases discovered to be Covid 19 positive. One was missed appendicitis and the other congenital heart defect requiring surgery.

Most intelligent people ask of me why the whole developed western world would perpetuate this hoax on its people. I am not an economist but due to the fact that I have managed my own pension since 2008 and have done a great deal of macro-economic research. In the process of this research, I, in common with many economists throughout the world believe that there is a inevitable economic collapse eminent, there are many red flags, one of which as the increase in and the REPO market rate from 1.3% to 10% on the 16th September 2019, followed on the 17th September 2019, by the American Federal Reserve stating that they would guarantee this short term lending system between the banks and major financial institutions. This to most economists signals a lack

of liquidity and the probable bankruptcy of a number of world banks, where the financial institutions are not willing to lend to each other overnight or over weekends. A similar event took place just prior to the subprime economic debt crash of 2008. This I have discussed with economists, business managers, stockbrokers familiar with macroeconomics who agree that an economic /monetary collapse is in the western world. They accept my hypothesis that Covid 19 is being used to front run this collapse, and the medical profession al will be scapegoated when the pathogenicity of the virus is widely known.

I expressed my opinion that there is a propaganda machine worthy of Goebbels" (Hitler's propaganda minister who is reputed to have said 'if a lie is told often enough it becomes the truth's or was it Stalin or both). The people of the country have been submitted to a constant stream of news, advertising and motorway signs reinforcing the Covid 19 agenda. If Covid 19 was a truthful public health issue there would be no need to push the agenda so often. It is not Ebola with a reported death rathe [sic] of 60%-70%. If it were, I would be in total agreement with all lockdown and distancing measures.

The average age of death during the 1918 Spanish flu was 18 years. The average age of death of Covid 19 in Italy was 81.6 also worldwide. Just over one million people died of Covid 19, on a background of sixty million people dying a year on this planet ever. If the September, 2020 report of the CDC in America is to be believed that 6% of certified deaths are due to Covid 19 alone, the other 94% have major pre morbid conditions, it would suggest that only a miniscule number of people on this planet have died of Covid 19.

In March I researched the use of P.C.R test which is used to detect fragments of the segmented single strand RNA in the Covid 19. The cycle threshold, in other words the number of replications required in an extremely complex process of heating and cooling to precise temperatures and the adding of reagents. There is no general agreement among virologist as to the number of cycles required and the implications for viral load, shedding of viral fragments and the likelihood of patients being infectious and passing on the virus. I found that 1% of all tests performed were false positives which has a major implication to the present lockdown, I felt the possibility of misidentifying the Covid 19 as another corona virus, which causes 25% of head colds in our population is very high. Nobody form the Department of Health or ICGP has persuaded me that I am wrong during the course of the Covid 19 webinars.

If I am wrong, the worst case is that I may have contributed in a miniscule way to the spread of a virus which has the mortality rate of a mild winter flu, motivated by the desire to protect my patients from a great evil. If I am right the medical profession will correctly be seen as a 'Judas Goat' which lead the people to the greatest financial and psychological crime against the people of this country since the great famine, motivated by the cowardice of doctors who follow the direction of politicians rather than living up to their Hippocratic Oath, 'First Do No Harm' and did not bother to do any due diligence of their

own. I wish to point out that at no stage did I broadcast my views on the internet or stand on a platform speaking to the public. I communicated the truth to my patients who choose to sit in my surgery and ask my professional opinion which I was duty bound to give.

I may have also discussed with [the complainant] the relative value of life. I do not consider that an 81 year old life having the same value of a 17 year old such as the young girl who committed suicide in Rathcoffey as was reported by me by her next door neighbour brought on totally by the stress and anxiety of the propaganda of the Covid 19 lockdown. I have discussed this issue with many elderly patients who all agreed with my believe that their life or my 70 year old life for that matter is not as important and valuable as their children's or grandchildren's. And who would gladly sacrifice their lives to save a younger person's life. In fact, a number has suggested that they would rather die then see the economic collapse and trauma being wroth upon the Irish people. Even if the 1790 deaths were caused by Covid 19 as opposed to related to Covid 19 as per Dr. Holohan,

I must state that on the vast majority of occasions when I communicated with Dr. David Haion, Dr. Brian Osbourne, Dr, Brendan O'Shea and the ICGP, not only did I not receive a satisfactory reply to my questions but I received no reply at all, in person or on the weekly Covid 19 webinar of the ICGP, most of which I participated in and received C.M.E points. In one letter to Dr. Hanlon (a copy enclosed) I demanded that the ICGP corrected my error in thinking if any.

If I did not do what I believe to be right after fifty years in medicine, my career would have been wasted. Even if I am in error, I must do what I believe to be right, as must every individual working in the medical profession. History will judge our actions at this pivotal and vital part in the history of the western world.

Due to my relative computer illiteracy, I have not been able to locate most of my communication with Dr. David Hanlon, Dr. Brian Osbourne, Dr. Brendan

O'Shea or the ICGP, but I am sure they will be in a position to provide all email when and if necessary. Please see a sample of the communications which I

have sent to the above name doctors at various different times.

I feel I have properly preformed due diligence in relation to this very serious social/medical condition. I believe that any doctor who did not research the Covld 19 is guilty of not fulfilling their contract with their patients if not guilty of wilful negligence.

Yours Sincerely,

[the Respondent]"

11. In the following weeks, the Respondent sent additional emails to the Council referring them to various articles, other documents and online publications in support of the numerous claims he made in his letter.

12. On 25th November, 2020 Dr Rita Doyle, President of the Medical Council, wrote to the Respondent in response to his initial letter. In her response, she expressed concern that the Respondent was not adhering to best professional practice and she sought assurances that he would follow HSE Covid-19 guidelines. In a series of letters exchanged between the Council and the Respondent dated, 3rd December, 2020, 16th December 2020, 8th January 2021, 18th January, 2021 the Respondent repeated his views regarding Covid-19 whilst the Council sought assurances from him that he would follow HSE guidance and best practice regarding public health measures.

13. Dr Doyle further avers that it came to the Council's attention that a patient of the Respondent appeared on the "Live Line" radio programme on Thursday, 11th February, 2021.

The host stated that his programme manager had spoken with the Respondent prior to the broadcast and that he had explained that he would not administer the Covid-19 vaccine because he was a "conscientious objector". Further comments of that nature were featured in an article in the Irish Times on 11th February, 2021 following an interview with the Respondent.

14. By letter dated 12th February, 2021, the Respondent was contacted by the HSE in response to a fax he had sent indicating that he did not intend to administer the Covid-19 vaccine to his patients. In that letter, the HSE requested that he provide the HSE with the name, address, date of birth, contact number and email address of his patients aged 85 and over and those aged 70 and over. He has yet to comply with that request.

15. Not having been able to obtain the assurances sought, on 13th of February, 2021, the Respondent was advised that a meeting would be taking place at the Council to determine whether an application pursuant to s. 60 of the 2007 Act to suspend the Respondent should be made to the High Court. The Respondent was present at the meeting but was not legally represented. In the course of said meeting, the Respondent again reiterated and supplemented his views regarding the Covid-19 pandemic. Regarding his willingness to send patients for testing, he made a range of contradictory remarks, first indicating that he would not be willing to refer people for Covid-19 testing as he did not wish to participate in a government conspiracy and "experimentation of humans" but later indicated that he would be willing to do so. As noted on p. 9 of the transcript of the hearing before the Council, the Respondent stated that a Covid-19 infection is no worse than winter flu. Furthermore, on p. 18 it is noted that the Respondent indicated that neither he nor his staff wear masks and that his practice does not comply with other public health measures.

16. Following the conclusion of the hearing, the Council decided to apply to this court pursuant to s. 60. It gave the following reasons:

"1. The Council has received a complaint dated the 16th of September 2020 from [the complainant] following a consultation with [the Respondent]. The complaint raised serious issues in relation to the clinical practice of [the Respondent] regarding Covid-19. Due to the nature of the complaints and the issues that arose as regards the protection of the public, the Council engaged with [the Respondent] between the 25th of November 2020 and 19th January 2021. Ut was clear form the correspondence that [the Respondent] was not prepared to provide any assurances to the Council that he will actively promote the public health guidance in relation to Covid-19 and refrain from providing information to patients that could undermine the HSE guidelines.

2. The Council heard from the CEO and from [the Respondent]. It is clear from [the Respondent's] submissions and his answers to questions from the Council that he considers himself to be a conscientious objector but that he is failing to follow the Guide to Professional Conduct and Ethics for Registered Medical Practitioners amended eighth edition 2019 and specifically clause 49. Whilst the Council accepts that [the Respondent] is entitled to hold personal and professional views, it is concerned for the safety of his patients as his views are based on third party material from … that cannot be objectively verified and include conspiracy-type theories that range from medical theories to economic theories.

3. It is clear that from the complaint of [the complainant] that [the Respondent] is not implementing or promoting HSE guidelines in relation to safety and the wearing of PPE to protect from Covid-19. Of great concern to the Council is the fact that he informed the Council that he has not yet referred any patient for a

Covid-19 test. Taking the allegation advanced by [the complainant], and the Council makes no findings in respect of the complaint, serious issues arise as regard the safety of the public such that an application should be brought to the High Court pursuant to s. 60. The Council have considered the strength of the case and noted the submission of [the Respondent] who has communicated in clear terms his view of the pandemic and the authorities' response to the pandemic. The Council have also considered what the appropriate sanction would be if adverse findings were made on the complaint of [the complainant] and is satisfied that the likely sanction would include suspension or cancellation.

4. The CEO and the Council invited [the Respondent] to provide undertakings and it was signalled that the he would undertake to cooperated with the HSE regarding the vaccination of patients and would undertake to refer Covid concerned patients to other general practitioners and not to share his personal views of Covid-19 with his patients.

5. However, the Council is of the view that the proposed undertakings do not sufficiently protect the public and that [the Respondent's] patients for the following reasons:

> a) they fail to deal with the practicalities of Covid-19, including the fact that many patients may not be Covid concerned but they require their doctor to be actively involved in the investigation and diagnosis of possible Covid-19 and to have the patient actively and urgently referred for testing, appropriate advice and treatment,

b) they fail to deal with the implication of HSE guidelines within [the Respondent's] practice, including the provision of information and safety measures including PPE,

c) they fail to ensure the swift referral of patients to alternative general practitioners in a manner that minimises the risk to the patient and to the public such, for example, advice on isolation and

d) considering the urgency of the risk to the public presented by the Covid-19 pandemic an application to the High Court is necessary as the court can make order or receive undertakings that can be readily and efficiently enforced and in a manner that could not be enforced by the Council."

The Application

17. The Council is seeking an interim suspension pursuant to s. 60 of the 2007 Act. Section 60 provides, in so far as is relevant to the within matter:

"(1) The Council may make an *ex parte* application to the Court for an order to suspend the registration of a registered medical practitioner, whether or not the practitioner is the subject of a complaint, if the Council considers that the suspension is necessary to protect the public until steps or further steps are taken under this Part and, if applicable, Parts 8 and 9.

(2) An application under subsection (1) shall be heard otherwise than in public unless the Court considers it appropriate to hear the application in public.

(3) The Court may determine an application under subsection (1) by —

> (a) making any order it considers appropriate, including an order directing the Council to suspend the registration of the registered medical practitioner the subject of the application for the period specified in the order, and
>
> (b) giving to the Council any direction that the Court considers appropriate."

Case law on section 60

18. Crucial to the present application is the fact that the Court, before it imposes an order of this type, which could have significant adverse consequences for the medical practitioner in terms of his livelihood and reputation, must be satisfied that the suspension is necessary in order to protect the public. To make this determination the court must take a range of factors into account.

19. As was stated by Morris J. in *Medical Council v. Whelan* (Unreported, 20th February, 2001), any order removing a medical practitioner's name from the register will likely work a very great hardship on a Respondent and possibly other members of their family. Hence, the court should only make such an order where no other order will serve to protect the community. And in that case, the court refused to accede to an application for an interim suspension and instead directed the doctor to comply with four conditions pending the hearing of his case before the Fitness to Practice Committee.

20. Furthermore, Kelly J. in *Casey v. Medical Council* [1999] 2 I.R. 534 stated that interim suspensions should be reserved for those exceptional cases in which a doctor has to be suspended from practice because it is in the public interest to do so.

21. It is also important that when asked to make an order under s. 60, that the court seeks to balance the right of the public to be protected from a medical practitioner who poses a risk to their care and welfare against the right of the medical practitioner to continue his or her practice until such time as an adverse finding may or may not be made against them. Accordingly, subject to the considerations in *Whelan*, the question I must ask myself on the present application is whether on the facts as disclosed to me the public interest outweighs the constitutional rights of the respondent to carry on his practice and earn his livelihood as a doctor and his right to avoid the reputational damage associated with the making of an order suspending his practice.

22. What is also abundantly clear from the authorities is that whether the conduct under consideration is such as to constitute a threat to the public must depend on the facts of the individual case. And, if an order suspending the medical practitioner is to be made, clear reasons must be offered as to why the public needs to be protected on the specific facts of that case.

23. As to the court's obligations on an application such as this, the court must review the Council's decision to proceed with an application under s. 60 of the Act. Guidance as to the factors which the Board must have considered before approaching the Court for this relief are identified in the judgment of Barron J. in *O'Ceallaigh v. An Bord Altranais* [2000] 4 I.R. 54, a case dealing with the interim suspension of a midwife pending the outcome of disciplinary proceedings under s. 44(1) of the Nurses Act 1985.

24. In *O'Ceallaigh* the court held that the relevant matters to be considered by the nursing Board (in this case the Council) when determining whether an application should be made to the court for an interim suspension are:

(a) the seriousness of the conduct complained of;

(b) the strength of the case against the practitioner; and

(c) whether the likely outcome, in terms of sanction, in the event of the misconduct being established would be a strike off either on a definite or permanent basis.

25. It follows that in an application such as that before the court, in which the suspension of a medical practitioner is sought, evidence must be placed before the court to show that the Council, in deciding to proceed to seek a suspension, has taken each of these factors into account.

Seriousness of the Respondent's conduct and strength of case against him

26. Before taking the wider considerations into account, a good starting point is to determine whether the Council, prior to approaching the court can be seen to have had regard to the three criteria set out in *O'Ceallaigh*. In this context, the first issue that needed to be considered by the Council was the seriousness of the conduct complained of.

27. The Council submits its concerns, broadly speaking, under four headings. First, it relies upon the fact that the Respondent does not operate his practice so as to comply with public health measures. No masks are worn by the Respondent or his staff and the wearing of masks by patients is not encouraged or enforced. No physical distancing measures are in place and the Respondent continues to operate walk-in appointments contrary to public health advice. Second, the Council is concerned regarding the Respondent's failure to refer patients for Covid-19 testing who show relevant symptoms. To date, the Respondent has yet to refer any patient for a Covid-19 test. Third, the Council points out that the Respondent has made it clear that he will not administer the Covid-19 vaccine. Lastly, the Council is concerned that the

Respondent is undermining the public health message more generally with the comments he sees it as his duty to make to his patients.

28. In relation to the above allegations, the Respondent raises two points. First, he argues that the conduct complained of is protected in light of his rights as a conscientious objector. In particular, he directs the court's attention to para. 49 of the Guide to Professional Conduct and Ethics for Registered Medical Practitioners (Amended) 8th edn. 2019 ("the Guide") wherein it is set out that a doctor may refuse to provide treatment or care if it conflicts with any sincerely held ethical or moral values. It provides as follows:

> **"49 Conscientious objection**
>
> **49.1** Subject to compliance with paragraphs 49.2 - 49.7 below, you may refuse to provide, or to participate in carrying out, a procedure, lawful treatment or form of care which conflicts with your sincerely held ethical or moral values.
>
> **49.2** If you have a conscientious objection to a treatment or form of care, you should inform patients, colleagues, and, where relevant, your employer as soon as possible.
>
> **49.3** If you hold a conscientious objection to a treatment, you must:
>
> • inform the patient that they have a right to seek treatment from another doctor; and
>
> • give the patient enough information to enable them to transfer to another doctor to get the treatment they want.
>
> **49.4** When you refer a patient and/or facilitate their transfer of care, you should make sure that this is done in a safe, effective and timely manner. You should help make it as easy as possible for the patient. When discussing the referring and/or transferring of a patient's care to another health professional, you should be sensitive and respectful so

as to minimise any distress your decision may cause. (See paragraph 8 – Equality and Diversity.) You should make sure that patients' care is not interrupted and their access to care is not impeded.

49.5 You should not provide false or misleading information, or wilfully obstruct a patient's access to treatment based on your conscientious objection.

49.6 If the patient cannot arrange their own transfer of care, you should make these arrangements on their behalf.

49.7 In an emergency situation, you must provide – as a matter of priority – the care and treatment your patient needs."

29. In brief, the Respondent claims that the convictions that he holds concerning Covid-19 and the Covid-19 vaccine are those over which there can be reasonable disagreement and are consequently protected by his right of conscientious objection.

30. Second, the Respondent argues that his conduct is not causative of the negative consequences for his patients relied on by the Council. Regarding his stance on vaccines, he contends that there is already significant vaccine scepticism in the general population and indeed amongst other medical practitioners and that his actions relating to other Covid-19 matters do nothing to undermine the public health effort.

31. Turning to the first of the Respondent's objections, it is clear that, should his conduct indeed be protected by his right to conscientiously object, he cannot be suspended for exercising that right. Having regard to the evidence before the Council and the respondent's right of conscientious objection as provided for in para. 49 of the Guide, whilst not required to decide the matter in the course of the present application, I am of the view that it is unlikely that any conduct on the part of the respondent other than that which relates to his unwillingness

to administer the Covid-19 vaccine, would likely be protected on this basis. Furthermore, whilst in principle I can see how a medical practitioner might invoke a conscientious objection to administering a vaccine which he or she considers had been licensed prematurely or in circumstances where there was evidence to suggest that its risks and efficacy had not been truly established, it will be very difficult for the Respondent to defend his conduct, even thus far on this basis.

32. The Respondent has known for many months of the government's vaccination programme and of the fact that all of his patients would in due course become entitled to be vaccinated, should that be their wish. And, general practitioners are charged with notifying their patients as to the availability of the vaccine and ensuring that they are contacted when the vaccine for their age or risk group is available. Notwithstanding his long-known conscientious objection to administering the Covid-19 vaccine, the Respondent does not appear, as required by the Guide, to have taken the requisite steps to inform his patients "as soon as possible" of his objection to administering the vaccine or of their right to have the vaccine administered by another doctor. It is difficult to know how many patients of the Respondent might not have received their Covid-19 vaccine, but for the complaint the subject matter of these proceedings. And while the Respondent is now clearly dealing with the HSE concerning his objection to administering the vaccine, it appears likely that the stimulus for this engagement was the complaint which underlies this application.

33. All of that said, it is important in the context of the present application for me to pay due regard to the undertaking which the Respondent is now prepared to give in relation to the delivery of the Covid-19 vaccine. And, having done so, I accept that any negative consequences for patients resulting from the Respondent's conscientious objection to administering the Covid-19 vaccine can, going forward, be catered to by the undertaking. Accordingly, in light

of that undertaking, I will disregard the Respondent's conduct thus far in relation to his non-engagement with Covid-19 vaccine for the purposes of considering the Council's application to suspend him pending the conclusion of the disciplinary proceedings.

34. Turning then to the Respondent's failure to carry on his practice in a manner compliant with public health measures and his failure to refer patients for Covid-19 testing. While these are matters which will have to be considered by the Fitness to Practice Committee in due course, they are nonetheless omissions which the Respondent will find difficult to defend on the basis of conscientious objection or indeed any other basis. In circumstances where he does not deny that Covid-19 can kill, particularly the elderly, and he does not deny that Covid-19 is contagious or that its onwards transmission is prevented by testing and tracing close contacts of those infected and by ensuring that an infected person remains distanced or in isolation from others, the Respondent will have difficulty in relying upon his rights in that regard.

35. Furthermore, it is hard to see how the Respondent's rights of conscientious objection could entitle him to make decisions for his patients regarding the risks he believes they should be willing to accept when visiting his practice. His failure to refer patients for testing when they present with Covid-19 symptoms and in failing to advise such patients to self-isolate and knowingly to operate his surgery in a manner which increases his patients' risks of contracting or spreading Covid-19 are difficult to excuse on any grounds. Conscientious objection rights surely do not permit doctors to place their patients at risk? The Council was therefore correct to consider the Respondent's conduct in this regard as serious, even in spite of his rights regarding conscientious objections.

36. The Respondent's second objection, based on his contention that his conduct does not place his patients at significant risk, will also be difficult to sustain. His failure to refer patients for Covid-19 testing may have very real and severe consequences for his patients and those

with whom they have close contact. At the risk of stating the obvious, to fail to test patients suspected of having Covid-19 may lead to undetected cases in the community and result in the uncontrolled spread of the virus. Similarly, the Respondent's failure and that of his staff to wear masks and the fact that mask wearing, physical distancing and other preventative measures are not encouraged or followed at his practice as well as the continuance of walk-in appointments make his premises unnecessarily dangerous for his patients. Non-adherence to these measures in a general practitioner's practice is particularly dangerous having regard to the fact that the general practitioner's surgery is often the first port of call for many who display symptoms of Covid-19. In this kind of environment, adherence to basic public health advice is vital. And, these are all factors to which the Council would appear to have paid due regard prior to bringing the present application.

37. In circumstances where it is admitted that the Respondent has failed to refer any patient for Covid-19 testing since the commencement of the pandemic and that he does not operate his practice in compliance with public health measures, the case against him when considered by the Council on the 17th February, 2021 was, I believe, of sufficient strength to justify this s. 60 application. In light of this and all that has earlier been stated, I am satisfied that the allegations made against the Respondent may well be considered to amount to a serious breach of professional conduct and that the evidence against the Respondent should indeed be categorised as strong.

Likely sanction

38. The consequences of the Respondent's behaviour are all too clear. As mentioned above, his failure to refer patients for Covid testing has the potential to have serious consequences for not only the Respondent's patients but also for the wider community. Furthermore, the manner in which the Respondent's practice is managed places all who currently attend there at

unnecessary risk, particularly the elderly, those who have serious underlying medical complaints, and those who live or work with people who may be particularly vulnerable to Covid-19. In circumstances where the Respondent has not referred a single patient for testing for the duration of this pandemic it follows that any of his patients who may have contracted Covid-19 but were not so diagnosed, would not have been told to self-isolate. In this respect the Respondent's behaviour has posed and will, unless curtailed, continue to pose a fundamental danger to his patients and those with whom they live or work for as long as Covid-19 or one if its variants are prevalent in the community. Given the dangers inherent in the Respondent's behaviour to date and his unwillingness to remedy the situation in a manner to remove his patients from unnecessary risk, it is likely that if found guilty of professional misconduct it is reasonable to conclude that he would be struck of the register either for a definite period or on a permanent basis. Consequently, I am satisfied that the *O'Ceallaigh* criteria are satisfied on the facts of this case.

Urgency

39. I should briefly turn to a point raised by the Respondent regarding the urgency of the application. The Respondent argued that since the Council had been aware of the complaint since the 16th September, 2020, it cannot now claim that such urgency exists so as to warrant a s. 60 suspension. Whilst I accept that the Council did not act with the utmost urgency in bringing the within application, and that the urgency with which a suspension application is brought often speaks to the Council's perception of the risks which the medical practitioner's conduct poses to the public, the significance of those risks cannot be determined by the speed with which the application is brought. Rather, when determining the urgency of the application, the court should principally look to the risk that the Respondent's conduct poses to his patients and the public at large. As discussed, the Respondent's alleged conduct poses a very significant

risk to his patients and the public and if his conduct were to continue, his patients and those with whom they live or work will continue to be put at risk for as long as Covid-19 or one of its variants is circulating in the community. This is why the present application must be considered urgent.

Undertakings

40. Counsel for the Respondent submitted that a more flexible and less restrictive order under s. 60(3) of the 2007 Act should be made having regard to the undertakings offered by the Respondent. However, having considered the terms of those undertakings I am not satisfied that they are not such as might allow me safely consider a less restrictive sanction than a suspension. The undertakings as proposed on behalf of the respondent are as follows:

> "I, [the Respondent], herby solemnly undertake/consent as follows:
>
> 1. I undertake to cooperate with the Health Service Executive (the "HSE") in relation to the vaccination of patients in respect of Covid-19, to include the provision of information relating to patients falling within the vaccination regime for the purposes of facilitating their vaccinations.
>
> 2. I undertake to make the necessary arrangements to facilitate referrals of patients with
>
> Covid-19 symptoms and/or concerns to an alternative practitioner for further assessment and/or treatment.
>
> 3. Insofar as a patient attends my practice and requires intervention in respect of Covid-19 symptoms and/[or] concerns, I undertake to provide such necessary intervention in accordance with the guidelines laid down by the HSE. In the event I am not in a position

to provide such interventions, I undertake to make appropriate referrals for that patient to an alternative practitioner.

4. I undertake to comply with my obligations as set out in Paragraph 49 of the Medical Council's Ethical Guidelines in relation to Conscientious Objection. In that regard, I undertake to inform my patients of the nature of my conscientious objection and inform them of their right to seek treatment from an alternative practitioner. In doing so, I undertake not to provide false or misleading information to my patients in relation to Covid-19."

41. In relation to undertaking 1, I am of the view that what is proposed may actually be workable. The undertaking would obviously require the Respondent to comply with the request by the HSE dated 12th February, 2021 wherein it requested that he prepare lists of patients in respect of his patients eligible for vaccination as well as comply with any future requests that might be made by the HSE in that regard. I should note however, that although the Respondent now offers this undertaking, no specific details have been forthcoming as to the steps he has actually taken to comply with the request of the HSE, a worrying factor in the context of the present rollout of the vaccine to those in the over 85's category.

42. In relation to the second undertaking, whilst the Respondent makes a general statement that he would facilitate the referral of his patients with Covid symptoms to other practices, he has given no indication in his undertaking or otherwise as to how this might work in practice. And, whilst I had no direct evidence on the matter, given that the aforementioned undertakings were only offered in the course of the hearing, I do not think it would be unreasonable to assume that for the next year or so, several patients a week, or possibly more frequently, are likely to present with symptoms which would require the respondent to refer them to another doctor under the terms of the undertaking. Yet, he has not told the court of any GPs in the area that

are available and free to take new patients, a relevant consideration having regard to the fact that not all GP's are willing to take on new patients. And, how soon would they be see a symptomatic patient following such a referral? Furthermore, the Respondent has not made clear what is to happen in respect of payment in the event of a patient being referred to another GP because they have symptoms of Covid-19. Neither has he indicated how patient records will be made available to any GP replacing the Respondent. Similarly, no undertaking is given as to what is to occur in circumstances where a patient presents with acute symptoms consistent with Covid-19. How will they be protected and treated? I therefore do not consider this undertaking as workable.

43. Turning then to the third undertaking, I would first note that it is very vague in its terms. On the one hand the Respondent proposes to provide "necessary intervention" but it is not clear exactly what that entails, particularly in circumstances where he claims he conscientiously objects to referring patients for testing or to administering the vaccine. Furthermore, in undertaking 3 he retains for himself the discretion not to carry out <u>any treatment</u> should he not be "in a position to provide such interventions". I find that not much is being offered in undertaking 3 that could prompt the court to impose a less restrictive sanction, than that of suspension.

44. As for the fourth undertaking proposed, the Respondent refers to the fact that he will undertake to inform his patients of the nature of his conscientious objection. However, he does not tell the court how he will define his conscientious objection. And, insofar as he undertakes not to "provide misleading information" to his patients in relation to Covid-19, this undertaking, having regard to the imprecise way it is formulated, is subjective and simply valueless in circumstances where he is convinced that the Covid-19 virus is a hoax. Thus, undertaking 4 is not something the court can rely upon.

45. Aside from the more specific concerns, I also have more general reservations. In circumstances where the Respondent operates as a sole practitioner, it would not be possible to police any of the proposed undertakings effectively. The Respondent has not offered to bring another practitioner into his practice to deal with all or any of his patients who might present with symptoms indicating a possible Covid-19 infection, and, neither has he identified any other local general practitioner willing to facilitate his patients in that regard. And, considering the serious adverse consequences that flow from his conduct, it would be inappropriate for the court to rely upon undertakings that cannot be supervised adequately. Furthermore, I believe that the Council is correct to be concerned that the Respondent has failed to give any undertaking to operate his practice in accordance with public health guidelines. He has given no undertaking that he would wear a mask or that he would require members of his staff to do so. He has not undertaken to ask his patients wear masks when attending the surgery and neither has he undertaken to comply with public health advice regarding social distancing or to remove the pamphlet in the waiting area earlier described by the complainant. In those circumstances I am of the view that the undertakings provided do not warrant the imposition of a less restrictive sanction.

Impact upon patients

46. A s. 60 suspension will undoubtedly have adverse consequences for the Respondent's patients. In particular, a suspension will have a serious impact upon his General Medical Services ("GMS") patients who will have to find a new doctor willing to have them as patients. This is particularly burdensome having regard to the added difficulty that few GPs are in a position to accept any patients, whether GMS or not, at this time due to the strain placed upon GPs in the wake of Covid-19. Thankfully, the evidence suggests that the Respondent has very few GMS patients.

47. Regardless of the consequences of a suspension for the Respondent's patients, I believe that any adverse consequences that flow from the suspension are outweighed by the risks that his conduct poses to them and those with whom they live if permitted to continue with his practice, regardless of the undertakings offered. The Respondent's conduct exposes his patients to the very real risk of infection when attending his surgery. If symptomatic for Covid-19 the Respondent's patients would, in my view, be at significant risk of remaining undiagnosed and untreated or having their diagnosis or treatment delayed. Furthermore, patients with Covid-19 symptoms might not be advised to self-isolate, thus furthering community transmission. All of the evidence heard in the context of the present application leads me to conclude that the health, safety and welfare of the respondent's patients and the community in which they live can only be adequately protected by the imposition of the suspension sought. These concerns outweigh all other considerations including the inconvenience, although burdensome, imposed on those patients who will have to find a new GP to attend with.

Impact upon the Respondent

48. As noted above, before imposing a s. 60 suspension, I must be satisfied that any such sanction does not disproportionately affect the Respondent. I must consider any direct financial consequences but also any wider reputational or other adverse consequences the Respondent may suffer as a result of the suspension. Having regard to any adverse consequences I would note two things. First, considering any financial consequences the Respondent might suffer, I have had regard to the fact that the Respondent is 71 years of age and for that reason suspending him from practice may not have the same financial impact it might have upon a medical practitioner at an earlier stage in their career. And, the respondent has not advanced any case of financial hardship. Nonetheless, the loss of one's income at any stage of a career should

never be underestimated and for that reason I have attached considerable weight to this consideration. Second, and more importantly, having regard to the seriousness of the allegations against the Respondent and the consequences that may flow from his conduct, I am of the view that a suspension, although carrying with it serious negative consequences for the Respondent, is not disproportionate in the circumstances.

Conclusion

49. For the reasons stated, I am satisfied that the Council was justified in bringing an application pursuant to s. 60 of the 2007 Act. The Respondent's alleged conduct as was before the Council was of sufficient seriousness to warrant the bringing of the present application seeking an interim suspension of the respondent from the Register of Medical Practitioners. The undertakings provided to the Council and the Court are not as such as to permit me to impose any less restrictive measures. As a result, having weighed all relevant considerations, I will grant the relief as sought by the Council.