

**THE HIGH COURT**

**[2023] IEHC 679**

**RECORD NO 2023 / 54 MCA**

**IN THE MATTER OF SECTION 60 OF THE MEDICAL PRACTITIONERS ACT**

**2007**

**BETWEEN**

**MEDICAL COUNCIL**

**APPLICANT**

**AND**

**A MEDICAL PRACTITIONER**

**RESPONDENT**

**APPROVED Judgment of Mr. Justice Mícheál P. O’Higgins delivered on the 11<sup>th</sup>**

**October 2023**

**Introduction**

1. This is an application by the Medical Council for an order pursuant to s. 60 of the Medical Practitioners Act 2007 (the “2007 Act”) suspending the respondent from the Register

of Medical Practitioners, pending the finalisation of a rape and sexual assault complaint made against him by a complainant.

2. In February of 2023 the complainant – whom I shall call Ms. A – made several extremely serious allegations against the respondent, including that he raped her at her home on the 15<sup>th</sup> of December 2022 and attempted to rape her on two separate occasions on the 30<sup>th</sup> of December and 31<sup>st</sup> of December 2022. The respondent denies all of the allegations and is contesting the Medical Council’s application for the suspension order.

3. Before I address the substance of the application, I think it would be useful to make some general observations on the nature of the application. Firstly, s. 60 of the 2007 Act provides as follows:

*“60.— (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”.*

4. In an application such as this, the court’s task is to form an assessment on whether the public interest in ensuring that members of the public are protected from a medical practitioner who poses a risk to their care and welfare, requires that, pending the

determination of the complaint in a fitness to practice hearing, the practitioner concerned should be suspended and prevented from carrying on his/her practice. It is important to note that since a s. 60 order is by its nature an interim suspension order, the court hearing the s. 60 application is not deciding the underlying complaint; does not hear evidence from the protagonists as to the substance of the allegations; does not resolve conflicts of evidence; and does not make findings of fact.

5. Rather, the court's role is to carry out a balancing exercise on the competing interests that arise in the case and decide whether the practitioner should be suspended pending the investigation and determination of the complaint. In determining whether to grant the interim order that is sought, the court endeavours to strike a balance between the paramount need to protect the public and the rights of the practitioner to practice medicine, earn a livelihood and not be subjected to reputational damage or injustice.

6. The necessity for the court to avoid making findings on the substantive allegations is reinforced in a case such as the present where the application for the suspension order is based on allegations of criminal wrongdoing that may later be the subject of criminal proceedings.

7. This may give rise to something of a tension or dilemma because the caselaw says the court in a s.60 application is required to form a view on the apparent strength of the case against the practitioner, and yet should avoid trespassing upon the role of the fitness to practice hearing or trial jury, and therefore must avoid being seen to make findings of fact or resolve conflicts on the evidence.

8. The principles to be applied in a s. 60 application are well established in case law and I gratefully adopt the summary of the relevant legal principles set out within two recent judgments of Barniville P. in *Medical Council v. Bukhari* [2022] IEHC 503 (delivered on the 29<sup>th</sup> of July 2022) and *Medical Council v. A Medical Practitioner* [2023] IEHC 171

(delivered on the 28<sup>th</sup> of February 2023). I will come back to those legal principles later on in this judgment.

**9.** The reason I have referred to the necessity for the judge hearing the s. 60 application to form a view on the apparent strength of the case against the medical practitioner concerned is because one of the leading cases in the area indicates that this is one of the three key factors to be considered. The Supreme Court per Barron J. in *O’Ceallaigh v. An Bord Altranais* [2000] 4 IR 54 held that the factors to be considered by the Council before applying for orders under s. 60 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 relevant practitioner];*

*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.”*

(See also *Medical Council v. F.C.M* [2018] IEHC 616 per Kelly P. at para. 40, and *Medical Council v. Waters* [2021] IEHC 252 per Irvine P. at para. 24).

**10.** It should be noted that, while *O’Ceallaigh* was decided in the context of the Nurses Act 1985, later case law indicates that the same principles apply equally to the Medical Council.

**11.** In the present case, factors (i) and (iii) above are not really in dispute. That is to say, it is accepted by the respondent that the underlying allegations are very serious as they include allegations of very serious sexual misconduct against a person who is said to be a patient and also involve allegations of serious impropriety and dishonesty. The third factor mentioned in *O’Ceallaigh* is also present here because there is no real dispute but that if the underlying allegations are found to be proven, the sanction imposed is likely to be the respondent’s

erasure from the Medical Register. It is beyond dispute that if the underlying allegations are proven, the alleged conduct would be considered fundamentally incompatible with the practice of medicine.

**12.** Accordingly, in the present case, the main focus was factor (ii) above, namely the apparent strength of the case against the practitioner concerned. In order to examine that issue, it is first necessary to examine the affidavit evidence before the Court.

**13.** The affidavit evidence consisted of the following:

- The affidavit of Suzanne Crowe, President of the Medical Council, sworn herein on the 24<sup>th</sup> of February 2023;
- The affidavit of Noreen McGovern of Fieldfisher Solicitors sworn on the 27<sup>th</sup> of February 2023;
- The affidavit of the respondent doctor sworn on the 15<sup>th</sup> of March 2023;
- The affidavit / supporting testimonial of the respondent's employer sworn on the 15<sup>th</sup> of March 2023;
- The second affidavit of Noreen McGovern of Fieldfisher Solicitors, exhibiting certain medical records, sworn on the 20<sup>th</sup> of March 2023;
- The third affidavit of Noreen McGovern of Fieldfisher Solicitors sworn on the 28<sup>th</sup> of March 2023 exhibiting additional medical records;
- The fourth affidavit of Noreen McGovern of Fieldfisher Solicitors sworn the 17<sup>th</sup> of April 2023 exhibiting further medical records;

The second affidavit of the respondent sworn on the 27<sup>th</sup> of April 2023 in which *inter alia* he acknowledges what he says were errors by him in his earlier affidavit and in his instructions to his own counsel in the suspension hearing before the Medical Council on the 22<sup>nd</sup> of February 2023.

14. I might note in passing that the respondent was present at the Medical Council meeting at which the decision was made to make the s. 60 application to the High Court and was represented by Hayes Solicitors and by senior counsel. The respondent continued to be represented by the same legal team for a while after the case came before the High Court. However, at some stage prior to the hearing of the s. 60 application, the respondent parted company with his legal team and, as was his entitlement, represented himself at the s. 60 hearing before me on the 21<sup>st</sup> July 2023. As is the norm with such applications, the case was heard on affidavit. Although the affidavits disclose conflicts of fact, cross-examination was not warranted because the court, as I have mentioned earlier, does not make findings of fact or resolve conflicts on the evidence.

#### **Grounding affidavit of Suzanne Crowe**

15. Ms. Crowe is a consultant anaesthetist and President of the Medical Council, and in her affidavit she outlines that the applicant is a statutory body established pursuant to Part 2 of the Medical Practitioners Act 1978 and continued in being by s. 4 of the Medical Practitioners Act 2007 as amended by s. 12 of the Health (Miscellaneous Provisions) Act 2007. The applicant maintains a register of medical practitioners known as the Register of Medical Practitioners and the respondent is registered in the General Division of the register. Ms. Crowe outlined that the respondent qualified from [REDACTED] in Iraq in [REDACTED] and subsequently registered in Ireland in the General Division in [REDACTED]. She avers that the respondent is currently practicing as a General Practitioner (GP) one day per week at the [REDACTED] and for one morning per week at the [REDACTED].

16. On the 16<sup>th</sup> of February 2023, the Medical Council received an email from the complainant, Ms. A, outlining that she had submitted a complaint to An Garda Siochana in

respect of the respondent. The complainant provided contact details of a particular Garda attached to a named Garda Station who was dealing with the criminal investigation in the event that the Medical Council wanted to obtain further information about the criminal investigation. The complainant submitted a handwritten formal complaint form which set out a number of very serious allegations against the respondent. The Medical Council also received a typed complaint from the Dublin Rape Crisis Centre on behalf of the complainant on the 17<sup>th</sup> of February 2023. In the course of the said documentation the complainant states that she was in a five-year relationship with the respondent, the last two of which were in Ireland. They did not live together as the respondent is married. The complainant alleges that she married the respondent within the Islamic faith and the respondent ended the relationship abruptly on the 18<sup>th</sup> of November 2022 by verbally divorcing the complainant. The complainant states that she sometimes worked as a secretary for the respondent at [REDACTED]

### **Sexual assault**

**17.** Ms. Crowe's affidavit outlines the various strands of the complainant's allegations. The complainant alleges that the respondent raped her at her home on the 15<sup>th</sup> of December 2022. The complainant states that she repeatedly told the respondent that he could not have sexual relations with her as they were no longer married. The complainant states that she did not consent to sexual relations, however the respondent forced himself on her.

**18.** The complainant alleges that the respondent attempted to rape her on the 30<sup>th</sup> of December 2022 and the 31<sup>st</sup> of December 2022. She alleges that on those two occasions the respondent entered her home without permission and attempted to rape her. She reported the rape and attempted rapes to the Gardai on the 1<sup>st</sup> of January 2023 and subsequently applied to the District Court for a barring order against the respondent which was granted.

### **Forced abortions**

19. Ms. Crowe's affidavit also states that the complainant alleges that she became pregnant on or about April 2022 and October 2022 and the respondent forced the complainant to take "Misoprostol" medication which he provided to her in order to induce abortions on both occasions.

#### **Forced cautery**

20. Ms. Crowe's affidavit indicates that the complainant alleges that the respondent forced her to "burn the wart in [her] private and his private areas by using cautery at home".

#### **Treatment of family members**

21. The complaint alleges that the respondent was her General Practitioner whilst they were in a relationship. The complainant further alleges that the respondent treats family members as patients.

#### **Falsely registering medication**

22. The complainant alleges that the respondent informed her that he applies for medical cards on behalf of his patients without their knowledge or consent. She alleges that the respondent falsely diagnoses these patients with conditions such as asthma in order to secure a medical card and registers medications such as *Victoza* and *Ozempic* pens under the patients' medical cards. The respondent would subsequently prescribe these medications to private patients at full market value.

23. The complainant alleges that the respondent regularly prescribes the medications *Victoza* and *Ozempic* to private patients for the purpose of weight loss and was in a position to do so due to his close relationship with a local pharmacist to whom, it was said, he directed all his patients to obtain their prescriptions. The complainant also alleges that the respondent supported some of his patients to apply for disability allowance on a false diagnosis basis.

#### **Tax evasion / fraud**



24. The complainant alleges that the respondent regularly requests that his patients pay in cash in order to avoid paying tax while working in [REDACTED] on Saturdays.

**Barring order**

25. Ms. Crowe avers that according to the Dublin Rape Crisis Centre the complainant had availed of supports from their office following her attendance at the Dublin District Family Court on the 1<sup>st</sup> of February 2023. The complainant secured an interim barring order in respect of the respondent in the District Court in January 2023. As of the 1<sup>st</sup> of February 2023, a three-year barring order has been put in place and the Gardai have opened a criminal investigation into the respondent on foot of a statement made to them by the complainant.

26. The applicant held an extraordinary Council meeting virtually on the 22<sup>nd</sup> of February 2023 in order to determine whether to make an application to the High Court for a suspension order under s. 60 of the 2007 Act. The respondent was represented at the Council meeting by Hayes Solicitors and by senior counsel who made oral submissions on his behalf. A transcript of the Council meeting was exhibited to the affidavit. Ms. Crowe confirms that the outcome of the meeting was that the Medical Council decided, having considered the documentation placed before it, the submissions on behalf of the CEO of the applicant, the submissions on behalf of the respondent, and the advice of the legal assessor, to apply to the High Court pursuant to s. 60 of the 2007 Act to suspend the respondent's registration, as this was considered necessary to protect the public until steps are taken under Parts 7, 8 and 9 of the Act.

27. The Medical Council provided the following reasons for its decision:

*“(i) The Council is satisfied that the matter is sufficiently urgent to justify a decision to refer the matter to the High Court and that this is a step which is necessary to take*

*in the public interest. In reaching this decision, the Council has given very careful consideration to the principles in the O’Ceallaigh case ...*

*(ii) The Council is satisfied that the nature of the complaint is extremely serious involving, as it does, allegations of very serious sexual misconduct against a person who is potentially vulnerable and was alleged to be a patient of the doctor, forcing the complainant to have an abortion, forcing the complainant to undergo medical treatment, fraud, dishonesty and prescribing irregularities among other things.*

*(iii) [The Medical] Council observes that it is very difficult to assess the apparent strength of the case in light of the conflicting accounts between the complainant and the doctor and the limited information available to Council today. The Council is satisfied that if allegations of the serious nature alleged were found proven, that the sanction is extremely likely to be erasure as the alleged conduct would be considered fundamentally incompatible with the practice of medicine.*

*(iv) While [the] Council is cognisant of the potential hardship on [the respondent] and the potential impact on his patients, based on all of the material before it and, in particular, the seriousness of the allegations and the likely sanction if the allegations are found proven, the Council is satisfied that an application to the High Court for an order pursuant to section 60 is necessary to protect the public in all the circumstances of the case.”*

**28.** The Council also made a direction to furnish the transcript of the Council meeting to the Preliminary Proceedings Committee of the applicant.

**First affidavit of Noreen McGovern, solicitor**

**29.** In her first affidavit sworn on the 27<sup>th</sup> of February 2023, Ms. McGovern of Fieldfisher Solicitors avers that she contacted the complainant on the 20<sup>th</sup> of February 2023 and during

the telephone call the complainant indicated that the respondent had contacted her family, friends and people from her city in Iraq and had allegedly threatened her and her family subsequent to her making her complaint to the Medical Council. A copy of an attendance of the telephone call is exhibited to the affidavit. Ms. McGovern also exhibits an email from another solicitor confirming the outcome of the complainant’s application for a barring order against the respondent before the District Court on the 1<sup>st</sup> of February 2023. The letter indicates the respondent gave an undertaking in the terms of a barring order for a period of three years and that the relevant District Judge gave the complainant liberty to apply again, should the undertaking be breached. Ms. McGovern also exhibits an attendance with the complainant following a telephone call with her on the 24<sup>th</sup> of February in which Ms. McGovern explained that the respondent had a right to see all of the documents that were being furnished by the complainant.

**Affidavit of the respondent**

30. In his first affidavit sworn on the 15<sup>th</sup> of March 2023, the respondent avers that he has been registered in the General Division of the applicant’s register since [REDACTED], having qualified in [REDACTED] in [REDACTED]. He says he practices as a General Practitioner two days a week – one day a week in the [REDACTED] and one morning a week in the [REDACTED]. He used to work three days a week in the [REDACTED] but had reduced this to one day a week, although he says his employer [REDACTED] would be happy if he worked more days during the week. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] He moved to [REDACTED] to work as a locum

GP. In [REDACTED], he met his employer, [REDACTED], who employed him as a part time locum GP until the present time.

**31.** The respondent then sets out quite a detailed outline of the complainant's allegations as follows:

*“i) That she had been in a relationship with [the respondent] for 5 years (the last two being in Ireland) and that [they] were married in accordance with the Islamic faith. She alleges that [the respondent] terminated the relationship “very abruptly” on 18 November 2022 and she says that [the respondent] divorced her “verbally”.*

*ii) She says that on 15 December 2022, [the respondent] visited her house and [he] raped her. She alleges that [he] did this despite her protestations that [the respondent] could not have sexual relations with her as [they] were no longer married. On the 30 and 31 December 2022 she alleges that [the respondent] visited her house without permission and tried to rape her on both occasions.*

*iii) She says that she applied for a barring order which was granted.*

*iv) She alleges that [the respondent] forced her to have abortions without her consent when she became pregnant in April 2022 and October 2022 by forcing her to take Misoprostol, which [she alleges] [the respondent] brought to her [himself].*

*v) She alleges that [the respondent] treats family members as patients, have many friends and family members registered as patients and when [they were] in a relationship, [the respondent] was her GP.*

*vi) She says that [the respondent] falsely register[s] medication under names patients of [his] who have medical cards.*

*vii) She alleges that [the respondent] applied for medical cards on behalf of [his] patients and diagnosed them with conditions that they did not have, such as asthma, on their medical file so that they could secure a medical card. It is claimed that some*

*of [the respondent's] patients were not aware that they had medical cards as [he] would handle all the paperwork [himself] and would register Victoza and Ozempic pens under these patient names which [the respondent] would then prescribe to private patients at the full market rate. She says that [the respondent] would prescribe these drugs to patients for weight-loss and [the respondent] was able to do this because of [his] relationship with [a local pharmacist] to whom [he] always directs [his] patients.*

*viii) She suspects [the respondent] also supported some patients of [his] to apply for disability allowance on the basis of a false diagnosis.*

*ix) She complains that [the respondent] regularly ask[ed] patients to pay cash so that [he] does not have to pay tax in [REDACTED].*

*x) She alleges that [the respondent] forced her to burn a wart on her private area and [his] private area by using cautery at home.”*

**32.** The respondent avers that he appreciates the court cannot determine the truth or otherwise of these allegations, but he says and believes that each of the allegations are totally untrue. Moreover, he believes that he can show a number of the allegations, even at this stage, to be demonstrably untrue. He then treats of the individual allegations in the balance of his affidavit.

**Allegations (i) and (ii) - Marriage/rape**

**33.** The respondent avers that he was in an extramarital relationship with the complainant. He says that this is a very difficult matter for both he and his wife, who is very supportive of him. However, he says it is untrue to say that the complainant and he were married, whether civilly married or in accordance with the Islamic faith as alleged. He avers that marriage in the Islamic faith is required to be done in front of two witnesses. He states that there were no such witnesses because they were never married in the Islamic faith or otherwise. He says he

has also contacted the Islamic Cultural Centre of Ireland and the Imam has confirmed in writing that the respondent has never been married in the Islamic Cultural Centre of Ireland. He exhibits the relevant letter. He says that it is striking that the very first thing the complainant has said in her complaint form is demonstrably untrue and he rejects the allegation that they were ever married.

**34.** In relation to the allegations of rape and attempted rape, the respondent avers that he is shocked by them and totally denies that he ever raped or attempted to rape the complainant. He avers that that all he can say to that allegation is that one of the only specific details provided by the complainant in relation to the allegation of rape is that she recounts that she said they could not have sexual relations because they were no longer married. As he set out earlier in the affidavit, he says this is completely untrue in circumstances where they were never married to begin with.

**Allegation (iii) – Barring order**

**35.** The complainant alleges that she applied for a barring order and that it was granted. The respondent indicates his understanding that such applications can be made under s. 7 of the Domestic Violence Act 2018 where the applicant is (i) a spouse of the respondent, (ii) is a civil partner of the respondent, (iii) is neither of the foregoing but lives with the respondent in an intimate relationship prior to the making of the application or, (iv) is the parent of the respondent. He avers that as is evident from the summons issued against him to attend the District Court in January 2023, the basis upon which the complainant sought the barring order was on the basis of category (iii) that they were living together in an intimate relationship prior to the making of the application. He avers that as is evident from the complainant's own account in the complaint form, the relationship had broken up in November 2022 and so there can have been no question whatsoever that they were living together in an intimate relationship prior to the making of the application. He avers that indeed, even during the

course of the extramarital relationship, the he and the complainant never lived together. He says that as such, it is clear from the complainant's own account, and from the face of the summons issued by the District Court, that the information provided to the District Court was not true.

**36.** The respondent says that it is clear from the face of the information grounding the application for the protection order that the complainant described the relationship as "husband and wife". He says that this is also demonstrably untrue (even on the complainant's own account to the effect that they were divorced by this time) and he says this removes the only other ground upon which the complainant would have been entitled to seek the reliefs before the District Court under the relevant legislation.

**37.** He avers that the Medical Council has now put before the High Court updated information to the effect, and contrary to the position put before the Medical Council, that there was, in fact, no order made by the District Court against the respondent. He says that the complainant had sought the District Court's protection on an entirely false basis, and that he went to the District Court and indicated that he was happy to give an undertaking to stay away from the complainant for a period of three years. He avers that he did this, not because he accepted that he had done anything wrong or that there was any basis for the court making such an order, but because he wanted nothing more to do with the complainant.

**38.** The respondent avers that the foregoing is extremely important for two reasons:

- (a) firstly, because it shows that the complainant was willing to put forward information to the District Court and Medical Council, which she knew to be false;
- (b) secondly, and more importantly, because the Medical Council was advised that contrary to the submissions made by senior counsel on the respondent's behalf that there was no objective evidence supporting any of these allegations, the case was made by counsel for the CEO of the Medical Council that in fact there was objective

evidence. He avers that the information provided to the District Court was false and when the complainant made her complaint to the Medical Council, the information that she provided, if not entirely false, was at the very least highly misleading. He exhibits a letter from his then solicitor [REDACTED] which he says confirms the position that there were no orders in place. The respondent avers that insofar as the applicant placed any weight on the existence of the barring order, he is advised (albeit inadvertently) that the applicant fell into error. The respondent also confirms that he is more than happy for an application to be made to the District Court for the release of the relevant records of the District Court applications, including the Digital Audio Recording (DAR).

**Allegation (iv) - Forced abortions**

39. The respondent says that the complainant alleges that he forced her to have abortions without her consent when she became pregnant in April 2022 and October 2022 by forcing her to take *Misoprostol*, which he brought to her himself. He avers that he absolutely denies that he ever procured *Misoprostol* and he denies that he ever suggested that she should have an abortion or that he forced the complainant to have abortions without her consent or at all. He avers that there is no objective evidence of this allegation whatsoever. He says that he is not sure what else he can say about this allegation other than the fact that he is conscious of the obligations under the Protection of Life During Pregnancy Act 2013. Furthermore, he refers to the affidavit of his employer [REDACTED] which avers to the fact that there were no prescriptions for *Misoprostol* written in her medical practice for the purpose of abortions during the whole of 2022. He avers that so far as he can recall, he doesn't believe that he ever prescribed *Misoprostol* in his career, but he can say with certainty that he never prescribed it for the procuring of an abortion.

**Allegation (v) - Treating family members and friends as patients**



40. The complainant alleges that the respondent treats family members and friends as patients, that he has many friends and family members registered as patients, and that when they were in a relationship, he was her GP. The respondent avers that there is no independent evidence of this other than the complainant's bare allegations. While it is true that some family and friends are registered in the same surgery he works in, he avers they are seen by other doctors. Furthermore, he says it's also true that he treats members of the Arab community in light of the language difficulties other doctors might encounter with them. He refers to the affidavit of [REDACTED] to the effect that they have no record of him treating family members. For the avoidance of doubt, he says it is not correct that he was the complainant's GP during the time they were in a relationship, and he believes that on all occasions the complainant was seen by another doctor in the practice, save on one occasion he believes he may have referred her to the hospital for fertility treatment. He also says, for the avoidance of doubt, he does not see family members or those with whom he has a close personal relationship in his other clinical commitment at [REDACTED]

**Allegations (vi), (vii) and (viii) – Fraudulent medical cards**

41. The respondent says at the outset that there is no evidence of these allegations whatsoever, and he says the source of the complainant's information appears to be a suggestion that he told her he was engaging in this fraudulent activity. He says that for the avoidance of doubt, he can say that he never told her any such thing, because it did not happen. He says that as he understands the allegation being made, the suggestion appears to be that he would obtain medical cards for patients under false pretences and use those medical card numbers to prescribe the medication to other patients at "full market rate" – the suggestion being that he was somehow profiting. He says he does not fully understand this allegation or how it is suggested that he was profiting in the manner alleged. He refers to the affidavit of his employer, [REDACTED], who states that it is not possible for a third party to

apply for a medical card for an individual as that application must be signed by the patient and, if successful, the card is sent directly to the patient (not a third party). Furthermore, he says [REDACTED] has confirmed that medical card prescriptions must be printed on GMS prescription sheets as opposed to private prescriptions, which are generated on [REDACTED] [REDACTED] headed paper and signed by the relevant prescribing doctor and he says that he has always been compliant with this protocol. He says that outside the [REDACTED], he does not otherwise have any means of access to GMS prescriptions.

42. Insofar as it has been alleged that he had been prescribing *Victoza* and *Ozempic* pens to other patients for weight loss, he refers to a letter from the pharmacist mentioned in the allegation, who speaks in general terms about the respondent's conduct and also that from his experience he (the respondent) has only ever prescribed these drugs to diabetic patients. The relevant letter from the pharmacist is exhibited. The respondent confirms that he has no difficulty with the pharmacist being contacted by the Medical Council to confirm the contents of the letter or in the event that they have any further queries regarding the allegations.

43. Insofar as the complainant "suspects" that he also supported some patients to apply for disability allowance on false diagnosis, he says he is not clear on what basis the complainant has this suspicion. He says it suffices for present purposes to say that he denies that he ever engaged in false diagnoses for any purpose whatsoever and completing disability applications is not part of his job. Again, he says there appears to be no basis for this allegation other than the complainant's suspicion.

#### **Allegation (ix) – Tax evasion**

44. The respondent notes the complainant's allegation that he accepted cash to avoid paying tax in [REDACTED]. He says he is not sure how he can positively prove that he never did such a thing without interviewing every one of his patients. However, he refers to a letter from his accountants which he exhibits. He says that he fully accepts that all it comprises is a

general averment in relation to his compliance on tax affairs and he appreciates that if he was hiding money, he would not be telling his accountants. He says that all he can say is that there is simply no evidence that he ever engaged in the activity alleged. He says without any specific evidence that he was actually engaging in this practice, it is impossible for him to refute it with any greater degree of specificity than a bare denial.

**Allegation (x) - Forced cautery**

45. The respondent says there is simply no further detail in relation to this allegation other than that he forced the complainant to burn a wart in her private area and his private area by using cautery. He says that all he can do in relation to this allegation, given the lack of any details to any of the allegations, is to deny that it ever occurred.

46. The respondent's responding affidavit concludes with the following additional points: He appreciates that this court cannot engage in a determination of the truth or otherwise of the complainant's allegations. He accepts that the allegations are extremely serious, and they include criminal offences for which the maximum penalty is life in prison. He accepts too that if he was found guilty of the allegations, in particular the allegation of rape and attempted rape, that he would likely be struck from the applicant's register. However, he invites the court to come to the view that even at this very early stage, there must be very considerable concerns about the complainant's veracity. He says this on the basis that he can show that the complainant has not been truthful: in particular the allegation that they were married. Further, he states that there appears to be a very clear basis for the view that she was untruthful with the District Court and thereafter with the applicant in relation to the issue of the barring order. He says that in relation to the other allegations regarding his practice, there is not a single piece of evidence in support of them and the evidence of [REDACTED] and the pharmacist concerned weigh very much against the allegations made. Moreover, he says that his employer, [REDACTED] attests to his good clinical standards, medical ethics and character.

He says that he has never been the subject of any adverse finding of the Medical Council or of any equivalent body in any other country.

47. He notes that whilst it is ultimately a matter for legal submission, he contends that the Medical Council is very far from making the case that the public protection requires his suspension. He says the ten complaints are completely without foundation or any independent supporting evidence. He believes they have been made as a direct result of his termination of the relationship with the complainant. Furthermore, many of the complaints appear to have been made on the basis of confessions he allegedly made to the complainant – an allegation which he completely denies.

48. The respondent says that he fully appreciates the applicant has a statutory role in protecting the public and he raises no issue with the *bona fides* of the applicant's position. However, he says it is clear that the applicant itself found it difficult to assess the apparent strength of the case in light of the conflicting evidence. He says it is now clear that the one piece of objective evidence that the applicant had, and which was emphasised by the applicant's counsel, was not only of less weight than it first appeared, but in fact it was something which weighed heavily against the complainant rather than in her favour. He says this court is now in a position to assess the allegations with more information than the applicant had, and which now shows that there ought to be serious doubts about the complainant's credibility.

49. As to financial matters, the respondent avers that while his income is modest (about ██████████ per month after tax) it provides for himself and his wife (who also works part time and makes a similar income to himself). He says that he and his wife rent in ██████████ in Dublin ██████████ and they have been lucky that their landlord has maintained a very modest rent given the rise in rental prices in recent years ██████████ He says that he can confidently say

that without the income he derives from his job as a GP, there would be a significant impact on his total family income.

50. He says that while he only works for two days a week, in light of his role in the Iraqi community in Ireland, and his ability to deal with large numbers of Arab patients who present communication difficulties for most other doctors, he says and believes that his suspension would have a significant impact on those patients who rely on him for their medical care.

While he appreciates that it is not a matter upon which this court would place much weight, he says he also believes that his suspension would have a devastating impact on his reputation as a leader in the Iraqi community in Ireland and as a doctor in that community.

51. Finally, he says that while he firmly and resolutely denies the allegations made against him, in the event that the application for his suspension is refused, he is willing to continue the undertakings he has given during the currency of the application until the determination of the fitness to practice inquiry or further order of this court. For all these reasons, he prays the court to refuse the reliefs sought.

**Affidavit of [REDACTED] the respondent's employer**

52. In her affidavit, [REDACTED] indicates that she is a General Practitioner who works in the [REDACTED]. She is aware in broad terms that serious allegations have been made against the respondent including rape and attempted rape. She says she has worked alongside the respondent for more than [REDACTED] years in the practice. In that time, she has found him to be entirely professional, courteous and understanding in his dealings with both staff and patients. He has always been obliging and community minded in regard to any difficulties with patients or staffing in the practice. She says there have been no complaints of any significance over that time regarding his dealings with patients or his prescriptions made known to her. She says the list of patients that the respondent deals with

would include patients from her list, as it is the only GMS list in their practice. She said the respondent is held in very high esteem by herself and all staff at the [REDACTED]

53. [REDACTED] then goes on to deal with a number of specific issues. She says that firstly, according to their medical records, there were no prescriptions for *Misoprostol* written for the purpose of abortions during the whole of 2022. Secondly, she says the respondent works on a part time/locum basis and has been since [REDACTED] although he has previously worked more days and she has sought that he would return to that. She says they have no record of him treating family members although he does treat members of the Arab community rather than his friends. He is held in high esteem in that community.

54. Third, [REDACTED] says that the respondent has never been responsible for applying for medical cards for patients as he does not have a GMS number and therefore is not authorised to do so. She says she is the only GMS doctor in the practice. Fourthly, she avers it is not possible for a third party to apply for a medical card as it is the individual who must sign it and if successful, the card is sent directly to the patient, not a third party. Fifthly, she says that medical card prescriptions must be printed on GMS prescription sheets as opposed to private prescriptions which are generated on the [REDACTED] headed paper and signed by the relevant prescribing doctor. She says the respondent has always been compliant with this protocol.

55. Sixth, [REDACTED] avers that insofar as it is alleged that the respondent sought to be paid in cash, he always directed his private patients to pay at the reception desk. She says all cash and credit card transactions can only be processed at reception. Seventh, she says they have identified all prescriptions for *Victoza* and *Ozempic* pens written within their practice and all were accurately prescribed for existing patients with diabetes. She concludes her affidavit by confirming she is happy to provide any further information to the court or the applicant if it would be of assistance.

**Second affidavit of Noreen McGovern sworn on the 20<sup>th</sup> of March 2023**

56. In this affidavit Ms. McGovern exhibits medical records subsequently received by the Medical Council from [REDACTED] in an email of the 1<sup>st</sup> of March 2023. She also exhibits the complainant's medical records from a number of hospitals including St. Vincent's University Hospital, the Rotunda Hospital, the National Maternity Hospital and also additional records received from the complainant relating to the complainant and the respondent. She also exhibits an attendance of a telephone call with the complainant on the 13<sup>th</sup> of March 2023 in which Ms. McGovern discussed the documentation that the complainant had furnished to her.

**Third affidavit of Noreen McGovern sworn on the 28<sup>th</sup> of March 2023**

57. In her third affidavit sworn on the 28<sup>th</sup> of March 2023, Ms. McGovern exhibits further documentation that the Council received and also carries out a detailed analysis of the medical records concerned. I am going to spend a little bit of time on this analysis because it seems to me that the analysis carried out by the applicant is important and must have involved a considerable amount of work and diligence on the part of the applicant's legal team. It analyses in great detail the medical records that had been obtained and contrasts them with the submissions put forward by the respondent's senior counsel at the extraordinary Council meeting of the 22<sup>nd</sup> of February 2023, and the averments made by the respondent in his replying affidavit of the 16<sup>th</sup> of March 2023. In this affidavit, Ms. McGovern sets out what she describes as the respondent's "inconsistencies" under a number of different headings. At paras. 10 to 25 of her affidavit, Ms. McGovern states the following:

*“Relationship with the complainant*

*10. Counsel on behalf of the Respondent made submissions at the Council Meeting that:*

*(i) it is not correct to say that the Respondent was in a relationship with the Complainant for five years (Tab D, Line 6, Page 20 of the transcript of the Council meeting exhibited to Suzanne Crowe's affidavit sworn 24 February 2023);*

*(ii) it is not true to say that there was a relationship of two years duration in Ireland (Tab D, Line 7, Page 21 of the Transcript of the Council Meeting exhibited to Suzanne Crow's affidavit sworn 24 February 2023);*

*(iii) the Respondent's relationship changed from a relationship of one of acquaintanceship and support to a physical, intimate, sexual relationship, which was referred to as an extramarital affair in or about February 2022 (Tab D, Lines 28 – 29 Page 21 & lines 1 – 5, Page 22 of the Transcript of the Council Meeting exhibited to Suzanne Crow's affidavit sworn 24 February 2023).*

*11. The respondent's replying affidavit does not aver to the duration of his relationship with the complainant.*

*The Complainant confirmed to me that she got married to the Respondent on 17 September 2018 in Turkey. She confirmed that it was a religious ceremony, there were no guests at the ceremony but two witnesses attended that were unknown to her. The Complainant indicated to me that the Respondent has the paperwork evidencing the marriage. The Complainant furnished me with photographs from her trip to Turkey with the Respondent in September 2018. The said photographs suggest that the Complainant and the Respondent were in a relationship well in advance of the submissions put forward by Counsel for the Respondent that the Respondent entered into an extramarital affair on or about February 2022. I beg to refer to the date stamped photographs at **Tab A** of the Booklet of Exhibits.*



12. The records received from the Complainant evidence that the Respondent attended at the Rotunda Hospital to have his semen tested on 29 November 2021. It appears from the documents received this was part of fertility treatment that the Complainant was undertaking at that time. It is of note that the Respondent has listed his home address as the address in which the Complainant currently resides and he has listed the Complainant's email address as a contact email for him. The said records suggest that the Complainant and the Respondent were in a relationship in which they were trying to conceive a baby well in advance of the submissions put forward by Counsel for the Respondent that the respondent entered into an extramarital affair on or about February 2022 (**Tab J, Page 427 – 429** to my affidavit sworn 20 March 2023).

13. The medical records dated 18 October 2021 received from the Rotunda Hospital reflect in their records that the Respondent was the Complainant's partner (exhibited at **Tab G, Page 64** to my affidavit sworn 20 March 2023). The admission form dated 20 May 2022 received from the National Maternity Hospital reflect that the Complainant's next of kin is her partner who is identified as the Respondent (Exhibited at **Tab 1, Page 227** to my affidavit sworn 20 March 2023). The National Maternity Hospital record states that the Complainant was discharged from hospital on 20 May 2022, escorted by her husband (Exhibited at **Tab 1, Page 212** to my affidavit sworn 20 March 2023). The patient care report dated 8 April 2022 received from the National Maternity Hospital noted that the Complainant "was underdoing treatment to get pregnant" and references the Complainant's GP as the Respondent and her next of kin is referenced as the Respondent (Exhibited at **Tab 1, Page 229 – 230** to my affidavit sworn 20 March 2023). The medical records received from St. Vincent's University Hospital dated 31 December 2022 reference that the

*Complainant was divorced at that time (Exhibited at **Tab E, Page 31** to my affidavit sworn 20 March 2023).*

*14. The complainant furnished me with an audio recording in which she has confirmed that the Respondent uttered the word “talaq” three times to her on 18 November 2022. The Complainant explained to me that “triple talaq” is a form of divorce that is practiced in Islam, whereby a Muslim man can legally divorce his wife by pronouncing “talaq” which is the Arabic word for divorce. I beg to refer to the audio recording at **Tab B** of the booklet of exhibits.*

***Was [the respondent] acting as the Complainant’s doctor while in an intimate relationship with her?***

*15. Counsel on behalf of the Respondent made submissions at the Council Meeting that:*

*“It is not true to say that the Respondent became in any sense her doctor. She attended other doctors within the practice, although [the respondent] believes that on one occasion, he may have given her a letter of referral for certain assessments at the Rotunda Hospital. But he was not her treating doctor, save that she was a patient of a practice in which he worked one day a week”. (**Tab D, Lines 23 – 29, Page 22** of the Transcript of the Council Meeting exhibited to Suzanne Crow’s affidavit sworn 24 February 2023)*

*“My instructions are he did not commence a relationship with her after she became his patient or became a patient of the practice more accurately, but after she became, after they began a sexual relationship, she was looking to register with the practice and he facilitated her registration with the [REDACTED] practice but she attended other doctors save for the fact that he believes he may have effected one particular referral for her for further*

investigations”. (**Tab D, Lines 21 – 29, Page 32** of the Transcript of the Council Meeting exhibited to Suzanne Crowe’s affidavit sworn 24 February 2023).

16. Section 60.1 of the Guide to Professional Conduct and Ethics for Registered Medical Practitioners (Amended) states that:

“You should not treat or prescribe for members of your family or others with whom you have a close personal relationship except in emergencies. You must not prescribe controlled substances for them or issue sick certificates or reports for them except in emergencies”.

17. There are at least 10 letters of referral from the Respondent in respect of the Complainant within a two year period in the bundle of medical records exhibited to my affidavit sworn 20 March 2023.

18. The Respondent is listed as the Complainant’s GP in the records received from St. Vincent’s University Hospital and the National Maternity Hospital. Further to this, the National Maternity Hospital issued correspondence to the Respondent regarding the Complainant missing an appointment in February 2022 (TAB 1, Page 275 to my affidavit sworn 20 March 2023).

***Evidence that the complainant was pregnant.***

19. Counsel on behalf of the Respondent made submissions at the Council Meeting that there was no objective evidence that the Complainant was ever pregnant. Counsel on behalf of the Respondent stated that:

“[the respondent] has given me instructions that the complainant at some point during the relationship told him that she thought she might be pregnant but certainly he never saw a pregnancy test. As far as he is aware, she never

*attended the hospital for treatment in respect of her pregnancy and he certainly did not direct her to undergo a medical abortion, nor did he provide her with Misoprostol to do so". (Tab D, Lines 1- 10 Page 31 of the transcript of the council meeting exhibited to Suzanne Crow's affidavit sworn 24 February 2023).*

*20. It is clear from the referral letter from the Respondent to Holles Street Hospital dated 7 April 2022 that the Respondent was aware that the Complainant was pregnant at that time, contrary to the submissions put forward by Counsel for the Respondent at the Council Meeting (TAB I, Page 228 of my affidavit sworn 20 March 2023).*

*21. It is clear from the referral letter from the Respondent to Holles Street Hospital/St. Vincent's Hospital dated 8 April 2022 that the Respondent was aware that the Complainant was pregnant at that time, contrary to the submissions put forward by Counsel for the Respondent at the Council Meeting (TAB J, Page 432 of my affidavit sworn 20 March 2023).*

*22. It is clear from the referral letter from the Respondent to Holles Street Maternity Hospital dated 31 May 2022 that the Respondent was aware that the Complainant had a miscarriage and a D&C on the 20 May 2022, contrary to the submissions put forward by Counsel for the Respondent at the Council Meeting (TAB I, Page 300 of my affidavit sworn 20 March 2023).*

*23. It is clear from the referral letter from the Respondent to Holles Street Hospital dated 12 August 2022 that the Respondent was aware that the Complainant was eight week pregnant at that time. The Respondent was seeking an opinion as to whether an emergency D&C procedure was necessary. This is also contrary to the submissions*

*put forward by Counsel for the Respondent (TAB 1, Page 224 of my affidavit sworn 20 March 2023).*

*24. The medical records received from the Rotunda Hospital note that the reason for the Complainant's visit was "abdo pain, feeling unwell, misoprostol given 15/12/2022, large bleed then, feeling unwell last few weeks, general legions". (emphasis added) (TAB G, Page 80 of my affidavit sworn 20 March 2023).*

***Allegations of rape/attempted rape***

*25. The Complainant disclosed to paramedics (31.12.22 at 20:25 at the scene) and the triage nurse, [REDACTED] (31.12.22 at 21.04) at St. Vincent's University Hospital that "Pt presented with chest pain, sensitivity to light....Pt stated that ex-husband came to her house this morning and attempted to rape her." (TAB E, Page 32 & 38–39 of my affidavit sworn 20 March 2023). [REDACTED] noted on 01.01.23 at 01.42 that "Pt c/o: chest lightness Pt mentioned that she has been going through a lot of stress. that her husband threatens to sexually assault her." (TAB E, Page 32 of my affidavit sworn 20 March 2023)."*

**Fourth affidavit of Noreen McGovern sworn on 17<sup>th</sup> of April 2023**

**58.** In this affidavit Ms. McGovern exhibits further medical records received from the Rotunda Hospital, the [REDACTED] and also documents received from the complainant since swearing her previous affidavit. She also exhibits medical records received from the Sexual Assault Treatment Unit (SATU) of the Rotunda Hospital. Ms. McGovern carried out a detailed review of the SATU records. I do not propose to set out the entirety of the affidavit but suffice to say the SATU records undoubtedly contain relevant and important records that

are likely to be the focus of significant attention in any fitness to practice or criminal trial setting. The following are sample entries (this is not intended to be comprehensive):

<b><i>“Page</i></b>	<b><i>Reference</i></b>
<i>TAB B, Page 5 – 6</i>	<p data-bbox="719 416 1378 521"><i>1) 15.12.22 – Sexual Assault and rape 1400 – 1600 hrs</i></p> <p data-bbox="719 562 1299 600"><i>2) 30.12.2022 – Attempted. 2000 hrs approx.</i></p> <p data-bbox="719 636 1273 674"><i>3) 31.12.2022 – Attempted. After 0900 hrs.</i></p> <p data-bbox="639 710 1326 891"><i>3. He tried to take off my clothes but I knew my rights then and I told him if you try to rape me again I will scream and shout to let my neighbours know.</i></p> <p data-bbox="639 927 1369 1108"><i>2. He tried to come beside me, to hug me, he tried to say that if I do not accept him he will rape me. I told him he cannot in this country.</i></p> <p data-bbox="639 1144 1374 1989"><i>1. I remember I did a wound on his penis, I actually didn't mean but I was trying to get away, to push him off. I remember my back was on the bed, he was over me (gesticulates supine + on top). He tried to open my legs by force. Then I can't my legs and he put his hands like this (gestures palms to sides of face). He fixed my head so he could force his lips on mine, I keep doing this (gestures shaking head). He fixed my head with hands and after that he put his lips on my lips. And I remember I moved my hands randomly, my nails were long, I remember his penis (gestures to erection with her finger) and then wound. Then I feel pressure then in my body. I</i></p>

	<p><i>don't know if he put all of his penis in my vagina but if felt like at the beginning of the relationship. The same pressure. Then I felt all his sperm on my legs and vagina.</i></p>
<p><i>Tab B, Page 6</i></p>	<p><i>...</i></p> <p><i>Verbal Threats – Self Box Ticked.</i></p> <p><i>Always – especially with the miscarriages.</i></p> <p><i>*Describes forced abortions. Has evidence of misoprostol.</i></p>
<p><i>Tab B, Page 9</i></p>	<p><i>After that, he moved to wash his penis, he realised he had blood. He saw this, I wiped myself with a tissue to my vagina and it was only his sperm. He came out of the bathroom, he said look you wound me. He looked for plasters from the table beside the bed. He put them on his penis and he get dressed and leave.</i></p> <p><i>I asked him to register our marriage legally then I understand he has his first wife here and they are legally here. He tells me she works in [REDACTED] [REDACTED] and she can force me to leave this country. He threatened that if I did refuse him he would deny any baby. He would deny the marriage. He would tell the community I am prostitute. He told my dad I refused my Hijab, that I take alcohol and drugs. Women in the community would kill me. He has put me in such a bad situation.</i></p>

<p>...Tab B – Pages 28 – 29</p>	<p>23.01.2023 – Attended to ER today with pelvic pain &amp; abdo pain secondary to forced abortions with cytotec x2.  Has reported to AGS – DPSV [a named Garda Station] but was confused re ED and SATU.  Medically assessed re Abdo pains. O/E abdo soft and non tender. No acute abdomen present.”</p>
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59. In addition, Ms. McGovern reviewed medical records received from the [REDACTED]

[REDACTED]. On Tab D at p. 8 the following entry is noted:

“Handwritten note of [REDACTED] “Walked in no appointment. Offered to see [REDACTED] [REDACTED]. Declined (Emergency) Missed period 8/52?? Lower abdo pain + vaginal bleeding, feverish. Refer to Holles Street Hospital ED”.

60. Ms. McGovern avers elsewhere that she received a number of emails from the complainant since swearing her previous affidavit to include:

“(i) text messages between the Complainant’s father and the Respondent;  
(ii) audio of a conversation between the Complainant and the Respondent;  
(iii) text messages between the Complainant and the Respondent.”

61. Ms. McGovern engaged a translation service to translate the text messages/audio that was received from the complainant. The translation service indicated that they had difficulty understanding some of the dialect and that is evident from the translations. She says that the complainant furnished her with the photograph of the medication named Arthrotec 50 which she alleges the respondent gave her to induce abortions.

62. At para. 12 of the affidavit, Ms. McGovern avers that the complainant informed her that the respondent contacted her father to ask for his permission to marry the complainant. The complainant informed her that the text messages set out the respondent’s suitability to



marry the complainant. A copy of the relevant email with the text messages in Arabic and the English translation is exhibited. The respondent refers in his proposal to the complainant's father that the respondent's marriage to the complainant be kept a secret. The respondent indicated that:

*“[the complainant] and [he] were married yesterday in a Pakistani mosque with [his] permission”.* (Tab F, p. 12).

**63.** Ms. McGovern also analysed text messages between the complainant and the respondent. She says that the complainant explained to her that the respondent had given her a number of blank [REDACTED] letterhead paper which contained the respondent's contact details and a stamp and advised her to use the letterhead if there was an emergency at night and she needed to go to the hospital. The complainant informed her that the text messages from the respondent of the 8<sup>th</sup> of April 2022 set out the information that the respondent told her to write on the blank [REDACTED] letterhead and she indicated that she drafted the referral letter and brought it to Holles Street Hospital.

**64.** In the penultimate paragraph of the affidavit Ms. McGovern avers that the complainant furnished her with an audio recording of a conversation between the complainant and the respondent in which the complainant asked the respondent to confirm if they are married and the respondent replies confirming that they are married. The relevant document and translation is exhibited.

#### **Second affidavit of the respondent sworn 27<sup>th</sup> April 2023**

**65.** This affidavit was sworn by the respondent to respond to the supplemental affidavits of Ms. McGovern. He avers in para. 4 that it remains his position that while he was in an extramarital relationship with the complainant, he was never married to her. He identified in his first affidavit that marriage within the Islamic faith requires two witnesses and that he

exhibited correspondence from the Islamic Cultural Centre of Ireland showing that the complainant and he were never married and that the allegation is demonstrably untrue. He notes that following the swearing of his earlier affidavit, and by way of response, the complainant now says that they were, in fact, married in 2018 in Turkey but that the witnesses were not known to her and that the respondent has the paperwork evidencing the marriage. He says that it remains the case that the allegation that they were married is completely unfounded and he says it is extraordinary that the complainant says that she did not know the witnesses at her wedding and cannot produce a single piece of evidence verifying that such a ceremony ever took place. He avers that he never married the complainant in Turkey or at all. He says that insofar that it is alleged that they were married, it is notable that on reviewing the complainant's medical notes, it is clear that she is internally inconsistent about her marital status:

*“(i) referring to herself as “divorced” on 3 May 2021 and 21 December 2021 after [they] had supposedly married and before [they] had supposedly divorced;*

*(ii) referring to [the respondent] on 26 July 2021 as her “friend”;*

*(iii) referring to her “husband” on 1 January 2023, after [they] had supposedly divorced from each other.”*

**66.** As to the text messages from the respondent to the complainant's father, and the recording of the conversation which the father of the complainant was also a participant, the respondent avers that this evidence is taken out of context. He avers that in each of these instances, he untruthfully, but in the interests of protecting the complainant's reputation as a Muslim woman, represented to her father that they were, in fact, married. He says he did this to protect the complainant's honour and in circumstances where the potential consequences for both of them, including his family in Iraq, would be severe were her father to have found out they had pursued an extramarital relationship.

67. The balance of the respondent's second affidavit is worth quoting in full:

*"6. I accept that the position presented to the Applicant on the extent and length of our relationship was incorrect. Through counsel and on my behalf, the Applicant was advised at the suspension hearing that my relationship with the complainant became more significant in or about February 2022. While it is true that the relationship between us since first meeting in September 2018 developed from one of friendship to a more intimate sexual relationship over the years, I regret not having been clearer about the timeline of the relationship at the time. On reflection I was seeking to minimise the nature of the relationship, again owing to the potential stigma for both the Complainant and I of having engaged in an extramarital affair.*

*7. On review of the medical records, my averment that I had only referred her on one occasion for medical treatment is also clearly incorrect. This is because I based my initial information on a phonecall with the [REDACTED] prior to the IMC hearing. However, when [REDACTED] and I went back to check the handwritten medical records of the complainant, we discovered that there were a number of referrals made by me which I had not recalled making at the time of the IMC hearing. Those referrals were done based on reasons of urgency and duty of care. I should note that I do not believe that I am the author of the referral date at 7 April 2022.*

*8. The complainant's medical records showed that she is registered on [REDACTED] [REDACTED] GMS list. While I had believed that she had attended with one or more of the other doctors in the [REDACTED] practice (and I note that it appears that she has attended other clinicians in the practice for minor matters) I accept that she was seen by me on more occasions than other doctors. On reflection I accept that I should not have attended her but as is reflected in my medical notes, I had advised that she should attend another doctor.*

9. Insofar as it has been alleged that I forced abortions on her, I say and believe that the photographs of the medication provided by the complainant in no way evidence any involvement by me, nor is there any evidence that I ever prescribed such medication, nor is there any evidence that I had any involvement whatever in relation to her taking such medication (if indeed she did take such medication).

10. I say and believe that the preponderance of the allegations originally made against me remain ones made without any objective evidence whatever, and in respect of the most serious allegations, rape/procuring a termination of pregnancy/fraud/fraudulent prescribing, I deny wholeheartedly that they occurred and there is a dearth of independent evidence supporting them.

11. I believe that these allegations arose only after the ending of my relationship with the complainant in November 2022. Unfortunately, the complainant's behaviour since my ending of our relationship has been extremely erratic and she has continuously attended my family home causing severe upset to my wife and to me. I have reported these incidents to the Gardai at [REDACTED] Garda Station. I believe that in this regard, her behaviour in attending repeatedly at my home is inconsistent with the allegations that I had very recently raped and attempted to rape her on a number of occasions. In particular, I say and believe the following:

a. I have been advised by [REDACTED] that the complainant approached [REDACTED] in a park near my home and spoke to her in a manner that caused her upset;

b. The complainant is present in a park in front of our family home on a regular basis and appears to have no other reason for being there than to beset our family home;

*c. I say and believe that the complainant recently attended a social event of the Iraqi community [REDACTED]*

*[REDACTED]. I am advised of their attendance by those who were present and I am further advised by a friend who was present, [name redacted] that she was making inquiries about me.*

*12. I have also been made aware of text messages sent by the complainant to [a named individual] which relate to me and efforts made by the complainant at procuring “terms” in relation to the alleged divorce between us and her obtaining financial compensation from me. While these text messages were provided to me by [a named individual], I have no reason to doubt their authenticity and they accord with my view previously expressed that the complainant only raised these allegations after the relationship with her ended in November 2022 and with the purpose of seeking retribution against me for the ending of that relationship...”*

**68.** In addition to outlining his position on the complainant’s allegations, the respondent averred on affidavit that he would be willing to continue the undertaking that he had already given along with the following additional undertaking:

*“That pending the determination of the fitness to practice proceedings [he] would work for one day a week only under the supervision of [REDACTED] in the [REDACTED] [REDACTED]”.*

**69.** He says that while he completely denies the allegations which have been made against him, he believes that any perceived risk to the public would be entirely removed by the undertakings offered.

**70.** He concludes his second affidavit by indicating that, in the event that there was to be an order suspending him from the Register, his reputation in the community and with his patients would be destroyed. He avers that he is very involved in the Arab community and, in

particular, the expatriate Iraqi community in [REDACTED], and he says he is a well-respected member of that community. He says he plays a particular role in the medical treatment of that community, and he avers that if he were suspended, his reputation would be in ruins and those members of the Arab community who attend him would find it difficult to obtain another Arabic-speaking doctor who understands issues affecting members of the Arab community.

71. Having outlined the evidence before the court, I now turn to the legal submissions made by the respective parties. Both sides provided helpful written submissions, and these were supplemented at the hearing with oral submissions.

#### **Legal submissions on behalf of the Medical Council**

72. The Medical Council notes that the respondent has denied all of the allegations of the complainant. However, the Council contends that in the course of his denials, the Respondent has made a series of what the Council suggests are demonstrably false statements, both to the Council and on affidavit to this Court. It is contended that these false statements concern matters which are absolutely central to the complainant's complaint: the extent of their relationship, his role as her treating doctor and his knowledge of her pregnancy. The Council asserts that the respondent has even admitted on affidavit to having deliberately attempted to mislead the Council on certain matters.

73. As to the applicable legal principles, the council refers to the decision of Barniville P. in *Medical Council v. Bukhari* [2022] IEHC 503 where the President set out an authoritative summary of the principles applicable to a s. 60 application. I will come back to that summary of the applicable principles later on in this judgment.

74. The applicant notes the procedural backdrop to the case in that the matter first came before the High Court in February 2023 by way of a notice of motion grounded on the affidavits of the President of the Medical Council and Suzanne Crowe of Fieldfisher

Solicitors. Counsel for the respondent sought an adjournment to allow the respondent to swear a replying affidavit and that was granted. The respondent gave certain undertakings to the court on oath as follows:

*“that any physical attendance with a female patient will be done with another person present in the room at all times;*

*that he [will] not contact [the complainant], her family or circle of friends;*

*that he would not prescribe any medication save in accordance with the HSE guidelines.”*

Thereafter, the matter was adjourned from time to time to facilitate an exchange of affidavits between the parties. The protracted exchange of affidavits necessarily postponed the hearing date. On the 19<sup>th</sup> of May 2023, this court listed the matter for hearing on the 21<sup>st</sup> of July 2023 with a for-mention date a week in advance to ensure that the matter was ready for hearing. The respondent’s undertakings to the court remain in place. The Council notes that the respondent is no longer legally represented and is a litigant-in-person.

**75.** The Council notes that though the complaint of the complainant itself spans quite a number of issues, the allegations of sexual assault/rape are by far the most serious and, in the applicant’s view, constitute the most pressing basis for the imposition of a s. 60 order against the respondent. The Council lays particular emphasis on submissions that were made on the respondent’s behalf during the suspension hearing and asserts that, in a number of important respects, the respondent’s position has been undermined and/or shown to be incorrect. The applicant submits that during the course of his submissions, senior counsel on behalf of the respondent forcefully argued to the Council that the basis of the complainant’s complaint was false and incorrect. It was stated to the Council that the complainant had entirely exaggerated the nature of her relationship with the respondent, and that insofar as the relationship was

anything other than platonic, it consisted of an extramarital affair that began in February 2022. It was stated that the respondent, as a prominent member of the Iraqi community in Ireland, received contact from the complainant some five years ago in respect of her prospective move to the State. He denied that they were ever married under the Islamic faith. It was stated that during the course of the extramarital affair, the relationship was difficult and that they saw each other intermittently. The complainant was a patient at the [REDACTED] where the respondent worked. The respondent denied the allegations of rape entirely, and in essence contended that the (false) allegations were a reaction to his decision to terminate the affair in November 2022.

**76.** The Council contends that there are a number of aspects of what the respondent told the Council which merit close scrutiny, given the evidence which has subsequently come to light, and in particular the medical records obtained by the Council. The Council submits that when these aspects of his account are contrasted with the documentary evidence as summarised below – which the Council maintains demonstrates that the account given to the it was false in material respects – very serious doubts must arise as to the respondent’s credibility and the veracity of his overall position. The Council breaks down these matters into the following headings:

***“i) The length of the relationship***

*[The complainant] alleged that she was in a relationship with [the respondent] for five years, including two years in Ireland. [The respondent] asserted (through counsel) that this was incorrect, that he began an extra-marital affair with [the complainant] in February 2022, and that it concluded in November 2022.*

***ii) Whether [the respondent] was [the complainant’s] treating doctor***



*[The complainant] alleged that [the respondent] was her treating doctor. [The respondent] told the Council that he was not her treating doctor, in the following terms:*

*“...it is not true to say that he became in any sense her doctor. She attended other doctors within that practice, although [the respondent] believes that on one occasion he may have given her a letter of referral for certain assessments at the Rotunda Hospital. But he was not her treating doctor, save that she was a patient of a practice in which he worked one day a week”.*

**iii) [The complainant's] pregnancy**

*[The respondent] (through counsel) told the Council the following in relation to [the complainant's] assertions that she was pregnant and that [the respondent] forced her to have two abortions*

*“No objective evidence that the complainant was ever pregnant. [The respondent] has given me instructions that the complainant at some point during the relationship told him that she thought she might be pregnant but certainly he never saw a pregnancy test. As far as he is aware, she never attended a hospital for treatment in respect of her pregnancy and he certainly did not direct her to undergo a medical abortion, nor did he provide her with Misoprostol to do so. By definition, he didn't”.*”

**77.** The Council notes that the respondent swore an initial replying affidavit in these proceedings on the 15<sup>th</sup> of March 2023. It is noteworthy that that affidavit contained a significantly lower level of detail in respect of his denial of the complainant's allegations than the explanation provided by his counsel to the Medical Council on the 22<sup>nd</sup> of February 2023. In particular, the respondent's affidavit confirmed that the respondent and the complainant had an extramarital relationship but did not specify the time period for that relationship. The affidavit was entirely silent on the complainant's pregnancies and miscarriages. The affidavit

did, however, repeat the assertion that he had treated the respondent on one occasion on which he “*may have referred her to the hospital for fertility treatment*”. The Medical Council contends that these aspects of the respondent’s sworn evidence are very significant in the context of this application. It is submitted that the Council has obtained a large volume of documentary evidence in the form of principally medical records which corroborate the complainant’s complaint and/or contradict the account of matters provided by the respondent. Below is a summary of the most significant aspects of this evidence, set out by reference to certain aspects of the respondent’s denials of the complainant’s complaint:

*“i) **The length of the relationship***

*27. There are numerous documents obtained which suggest that the relationship between [the respondent] and [the complainant] commenced prior to February 2022.*

*For example:*

*(a) Photographs provided by [the complainant] dated September 2018, which she says was taken on a trip she took to Turkey with [the respondent], during which they were married on the [REDACTED] 2018;*

*(b) A record from the Rotunda Hospital dated 18 October 2021, referring to [the respondent] as [the complainant’s] partner; 1) A record from the National Maternity Hospital dated 26 July 2021, referring to [the respondent] as [the complainant’s] next of kin;*

*(d) A letter from the Rotunda Hospital dated 20 December 2021 addressed to [the respondent] at [the complainant’s] home address... enclosing a semen analysis from testing which took place on 29 November 2021;*

*(e) Patient care report dated 8 April 2022 for [the complainant] from National Maternity Hospital, referring to [the respondent] as her next of kin;*

*(f) An admission form from the National Maternity Hospital dated 20 May 2022 for [the complainant] referring to [the respondent] as her next of kin;*

*(g) A discharge form from the National Maternity Hospital dated 20 May 2022 for [the complainant] which states that she was escorted by her husband.*

*The Council will also rely on the referral letters from [the respondent] from before February 2022 (set out below) in support of the proposition that the information concerning his relationship with [the respondent] that he provided to the Council was false.*

*(ii) Whether [the respondent] was [the complainant's] treating doctor*

*28. There are numerous documents obtained which suggest that [the respondent] treated [the complainant] on a routine basis, and that his assertion to the Medical Council that he wrote her a referral letter once was false. Some of these referral letters pre-date February 2022, which is the date that he told the Council that his relationship with [the complainant] began on. For example:*

*(a) Referral letter dated 3 May 2021 for [the complainant] from [REDACTED] written by [the respondent];*

*(b) Referral letter dated 6 July 2021 for [the complainant] from the [REDACTED] written by [the respondent];*

*(c) Gynaecology patient registration from the National Maternity Hospital dated 26 July 2021 for [the complainant], referring to [REDACTED] of [REDACTED] as [the complainant's] treating GP, but providing [the respondent's] mobile phone number as the relevant contact point;*

*(d) Referral letter dated 8 October 2021 for [the complainant] from the [REDACTED] [REDACTED] written by [the respondent];*

(e) Letter dated 3 February 2022 from the National Maternity Hospital to [the respondent], thanking him for referring [the complainant] and alerting him to [the complainant] missing an appointment on that day;

(f) Referral letter dated 15 February 2022 from [the complainant] from the [REDACTED] written by [the respondent];

(g) Referral letter dated 7 April 2022 for [the complainant] from the [REDACTED] written by [the respondent];

(h) Referral letter dated 8 April 2022 for [the complainant] written by [the respondent];

(i) Patient care report dated 8 April 2022 for [the complainant] from the National Maternity Hospital, referring to [the respondent] as her treating GP;

(j) Referral letter dated 31 May 2022 for [the complainant] from the [REDACTED] written by [the respondent];

(k) Handwritten referral letter (undated) for [the complainant] from [the respondent];

(l) Self-referral of [the complainant] to St. Vincent's Hospital dated 21 December 2022, listed [the respondent] as her treating GP;

(m) Self-referral of [the complainant] to St. Vincent's Hospital dated 31 December 2022, listed [the respondent] as her treating GP.

**(iii) [The complainant's] pregnancy and abortion**

There is a considerable volume of evidence which suggests that [the complainant] and [the respondent] were making extensive efforts to conceive during 2021 and 2022; that [the complainant] did become pregnant; that she suffered a miscarriage; and that [the respondent] provided her with medical care and acted as her GP throughout.

This can be contrasted with the position he took before the Council at its meeting of 22<sup>nd</sup> February 2023, at which he in effect denied even knowing that [the complainant]

*was pregnant. There is also medical evidence which supports [the complainant's] account of having had an abortion in May 2022.*

*30. ...What is set out below is a clear summary of the documents before the Court which demonstrate [the respondent's] clear knowledge of, and involvement in, [the complainant's] pregnancy...:*

*(a) Referral letter dated 8 October 2021 for [the complainant] from the [REDACTED] written by [the respondent], referring to [the complainant's] infertility;*

*(b) A letter dated 15 November 2021 from the Rotunda Hospital to the [REDACTED] regarding [the complainant's] fertility*

*(c) A referral letter dated 6 July 2021 for [the complainant] from the [REDACTED] written by [the respondent], to the National Maternity Hospital seeking gynaecological ultrasound;*

*(d) A letter dated 13 October 2021 from Specialist Registrar at the National Maternity Hospital to [REDACTED] which states that [the complainant] has been trying to conceive for the last twelve months and has unprotected sex three times per Ik;*

*(e) A referral letter dated 4 April 2022 for [the complainant] from the [REDACTED] written by [the respondent], which states that [the complainant] is three weeks pregnant;*

*(f) A referral letter dated 7 April 2022 for [the complainant] from the [REDACTED] written by [the respondent], which stated that she is three weeks pregnant;*

*(g) A diagnosis document dated 8 April 2022 recording ultrasound images suggestive of an early gestation sac;*

*(h) A diagnosis document dated 20 May 2022 for [the complainant] from [the] National Maternity Hospital which records a missed miscarriage and an evacuation of retained products of conception;*

*(i) An admission form from the National Maternity Hospital dated 20 May 2022 for [the complainant], referring to [the respondent] as her next of kin;*

*(j) A discharge form from the National Maternity Hospital dated 20 May 2022 for [the complainant] which states that she was escorted by her husband;*

*(k) A referral letter dated 12 August 2022 for [the complainant] from the [REDACTED] [REDACTED] written by [the respondent] to the National Maternity Hospital, which references [the complainant] being eight weeks pregnant and potentially requiring an emergency D&C (dilation and curettage);*

*(l) A diagnosis document dated 13 August 2022 for [the complainant] from the National Maternity Hospital which records a missed miscarriage in May 2022, noting loss of pregnancy symptoms ten days earlier in Turkey.”*

**78.** In addition, the Medical Council relies on two documents relating to a semen analysis carried out by the Rotunda Hospital in respect of what is said to be the respondent in 2021, addressed to the respondent at the complainant’s home address.

**79.** As to the complainant’s allegations regarding the respondent forcing her to have abortions through taking Misoprostol (in April 2022 and October 2022), the Medical Council relies on the following evidence:

*“(a) A diagnosis document for [the complainant] dated 23 February 2023 from the Rotunda Hospital, which records that [the complainant] took Misoprostol on 15 December 2022;*

*(b) A handwritten attendance dated 23 January 2023 for [the complainant] from the Rotunda Hospital Sexual Assault Treatment Unit (SATU) which refers to “forced miscarriage/abortions” and “evidence of Misoprostol”.*”

**80.** The Medical Council lays particular emphasis on the contents of the respondent’s second affidavit and contends that it contains significant admissions by the respondent that he provided false information to the Council. The Council contends that the respondent deliberately sought to minimise the nature of the relationship. The Council points to the respondent’s contention that he did so due to the stigma arising from the extramarital affair. The Council notes that at para. 7 of his affidavit, the respondent admitted that his assertion that he only filed one referral letter for the complainant was false. He attributes this to poor recollection on his part of a phone call with the [REDACTED] prior to the Council’s meeting in February 2023. The Council points out, however, that the respondent failed to address at all the false statement he made to the Council that he knew nothing about the complainant’s pregnancies and that he had no involvement in her pregnancies. In point of fact, it is submitted that the record showed that he is very familiar with the pregnancies, referred the complainant to hospital on the occasion of each of her two miscarriages in 2022, and arranged for fertility testing of his own semen in 2021. The applicant suggests that all of this points towards the respondent and the complainant trying to conceive and further that he was the male responsible for the conception in the case of each of the two miscarriages.

**81.** The applicant also draws attention to para. 5 of the respondent’s affidavit of the 27<sup>th</sup> April 2023 where he addresses the text messages provided by the complainant to the Medical Council, in which the respondent asserts to the complainant’s father that he and the complainant were married. The Council notes the respondent’s claim that he lied to the complainant’s father in order to protect the complainant’s reputation as a Muslim woman.

**82.** In terms of the substantive allegation of rape, the applicant contends that, as is often the case with contested allegations of sexual assault, there is nothing by way of contemporaneous documentary evidence to materially corroborate either party's version of events. However, the Council contends that the following events, to varying degrees, corroborate the complainant's essential account of matters:

*“(a) The complainant attended at St. Vincent’s University Hospital on 31 December, 2022:*

*(i) [REDACTED], Triage Nurse on duty at the time, noted [the complainant’s] claims “she was physically assaulted by her partner and attempted sexual assault this morning, same disclosed to paramedics.”*

*(ii) The paramedic noted on Incident Information Form: “Pt presented with chest pain, sensitivity to light...Pt stated that ex-husband came to her house this morning and attempted to rape her.” “Additional Information: “Pt disclosed this info on way to hospital and was passed onto nursing staff”.*

*(b) [The complainant] attended at the Rotunda Hospital’s Sexual Assault Treatment Unit (SATU) on 23 January 2023 and gave an account of the sexual assaults the subject matter of these proceedings which was broadly consistent with the substance of her complaint to the Medical Council;*

*(c) [The complainant] sought and obtained a protection order (and subsequently an interim barring order) in respect of [the respondent] in January 2023, and in so doing, gave evidence in the District Court which was consistent with the substance of her complaint to the [Medical] Council;*

*(d) [The complainant] has made a criminal complaint to [a named] Garda Station in respect of the rape allegations.”*



**83.** The applicant says it is worth considering certain aspects of the respondent's characterisation of the complainant. The respondent has sought to discredit the complainant at every turn. He has accused her of "carpet bombing" his reputation. He has described her as a "crazy lady". He has portrayed her allegations as irrational and the malicious reaction of a woman scorned by his decision to end their relationship. He has accused her of lacking veracity and of lying to the District Court.

**84.** In its written submissions, the Council noted that the respondent (through counsel) had accused the complainant of making threats against him through text messages in the wake of the ending of their relationship. Counsel on behalf of the respondent made the submission at the suspension meeting and it was suggested that those text messages would be put before the court when translations from their Arabic versions became available. At the time of preparation of the written submissions, it was urged by the Medical Council that these text messages had never been put before the court and that for that reason there must be a serious doubt as to whether they exist, in light of the other false statements made to the Council at that meeting on the respondent's behalf.

**85.** However, it should be noted that the submission of the Medical Council made in the written submissions that I have just referenced has now been overtaken by events because, prior to the matter coming on for hearing, the respondent did make available to the court and to the applicant the contents of a text message that is said to have taken place between the complainant and an acquaintance of the respondent which, on the respondent's case, call into question the complainant's motivations for making her complaint and also suggest that she is interested in his money. I will come back to the significance of that text message presently.

**86.** The applicant contends that the respondent's allegations against the complainant must be viewed through the prism of the materially dishonest and incomplete account of events given by the respondent to the Council and on affidavit to this Court. The applicant says the

respondent is in no position to impugn the credibility of the complainant having, on his own evidence, sought to deliberately mislead the Council on matters which go to the heart of the complainant's complaint. It is said that the respondent has further claimed to have lied to the complainant's father regarding their relationship. In these circumstances it is submitted that it is utterly inappropriate in those circumstances for the respondent to ask this court to view the complainant as having been discredited.

**87.** As to the overarching legal issues, the Council contends that it is in the public interest to suspend the respondent from practice. The applicant says there is strong evidence before the court that he was engaged in wrongdoing of a most egregious kind. The Council relies principally on the rape allegations made by the complainant, but also on the coterie of other allegations of wrongdoing made against him, none of which he has satisfactorily refuted. It is submitted that when weighing the public interest in the respondent's suspension against his right to earn a livelihood, this court is entitled to have regard to the fact that he works one day a week in [REDACTED]. The infringement on his professional existence on his suspension would necessarily be lower than the equivalent imposition on a doctor working full time. The Council reiterates that the court is not engaged in a fact-finding mission. It is not required to arrive at a concluded view as to whether or not the complainant's allegations have substance, or are likely to be proven. Rather, the court is required to look at the material before the court in the round and decide whether the public interest merits the imposition of suspension.

**88.** It is the Council's submission that in carrying out that exercise, the court must have regard to the fact that, when met with an allegation of the utmost seriousness, the respondent (by his own admission) sought to mislead the Council in relation to the extent of this relationship with the complainant; falsely claimed that he did not know that she was pregnant, in circumstances where he was very centrally involved in the treatment of her pregnancies (and may have been responsible for their conception); and falsely denied having been the

complainant's treating doctor. These falsehoods were perpetuated (whether expressly or by omission) on affidavit in these proceedings. The Council invites the court to infer that in swearing his affidavit on the 15<sup>th</sup> March, 2023, in which he either explicitly maintained certain of the false statements made to the Council or failed to correct them, the respondent deliberately sought to mislead the court.

**89.** Finally, the Council submits that the approach of the respondent to the complaint and the litigation – both in terms of his own account of matters and in terms of his denigration of the complainant – is a matter which the court may properly weight in the balance in deciding whether to impose a s. 60 sanction.

#### **Submissions on behalf of the respondent**

**90.** The respondent relies on matters set out in his replying affidavits of the 15<sup>th</sup> March 2023 and 27<sup>th</sup> April 2023. In particular he reiterates the fact of his long and distinguished medical career in Ireland and Iraq. He admits that he engaged in a totally wrong and inappropriate relationship with the complainant which he initially sought to minimise. He indicates that he deeply regrets both the relationship and the minimisation of the relationship. In addition, he admits that under duress by reason of emotional outbursts and threats from the complainant, he referred her for treatment on a number of occasions. However, he totally denies the veracity of the grave allegations of rape, sexual assault, forced abortions, forced cauterisation, falsely registering medications/medical cards, tax evasion and fraud that have been made against him by the complainant.

**91.** The respondent places particular emphasis on the fact that, despite their serious nature, no criminal proceedings have been commenced by An Garda Síochána on foot of any of the complainant's allegations. The respondent emphasises that he is willing to continue the undertakings given to the Medical Council and the court on oath to only see patients in the

presence of medically qualified female chaperones, not to contact the complainant or her family or her circle of friends; and to continue to prescribe medication in line with HSE guidelines. He also indicted that he is willing to give any other undertaking on oath that the court and Council considers appropriate in the circumstances.

**92.** The respondent emphasises the wording of s. 60 of the Medical Practitioners Act 2007 and submits that the legal question at issue in these proceedings is whether the applicant Medical Council has satisfied the test contained in the section, namely that it has demonstrated that the respondent's "*suspension is necessary to protect the public until steps or further steps are taken under*" the Act.

**93.** The respondent accepts that the criteria to be considered by the applicant in deciding whether to bring an application under s. 60 are those identified by Barron J. in *O'Ceallaigh v. An Bord Altranais* [2000] 4 IR 54 and recently applied by this court in *Medical Council v. Medical Practitioner* [2023] IEHC 171 (per Barniville P. at para. 62). Taking each of the *O'Ceallaigh* criteria in turn, the respondent acknowledges that the allegations made by the complainant are extremely serious. However, the respondent submits that, except in relation to the referrals made by him under duress, they are not true and have been manufactured by the complainant out of spite and vindictiveness in order to damage his reputation and medical practice as a result of the respondent ending an admittedly wrong and inappropriate extra-marital relationship with the complainant.

**94.** The respondent submits that there is no substance or strength whatsoever to all but one of the complainant's allegations. The allegation he appears to accept is the allegation that he referred the complainant for medical treatment but he claims that he did so under duress.

**95.** The respondent asserts that no criminal investigation has been instigated by An Garda Siochana and no criminal charges have been brought. I think I should pause there for a moment because it seems to me that in relation to the first of those matters, the respondent

appears to be in error: the evidence indicates that a criminal investigation has been instigated by the Gardai, in the sense that An Garda Síochána are looking into the complaint which the complainant has made. However, it is accepted between the parties that no criminal charges have been brought. Nor is there any information as to whether a file is being prepared for the DPP and/or whether any recommendation has been made by An Garda Síochána.

**96.** The respondent indicates that he is willing to notify the Medical Council and the court of any developments in relation to a criminal investigation or criminal charges in the future. He says that if criminal charges are brought, they will be vigorously contested.

**97.** In terms of the third of the *O’Ceallaigh* criteria, the respondent acknowledges that in the event of an adverse finding on the substantive complaints, the respondent will be subjected to the most serious sanctions such as the cancellation of his registration.

**98.** The respondent submits that while the paramount consideration of the Medical Council in bringing these proceedings is undoubtedly the need to prevent “*immediate danger to the public*”, the role of the court on a s. 60 application is to balance the public interest of patient safety with the constitutional rights to good name, reputation, right to earn a livelihood and a right to be presumed innocent that are enjoyed by the medical practitioner. This balancing exercise requires the court to undertake a proportionality assessment of the likely impact the proposed order will have on the constitutional rights of the respondent. The respondent contends that in seeking to strike a proportionate balance, the courts have repeatedly stressed that interim suspension orders such as orders under s. 60 are a remedy of last resort and should only be made “*when no other order will serve to protect the community*” (per Morris J. *Medical Council v. Whelan* unreported High Court 20<sup>th</sup> February, 2001). In the respondent’s submission there is a clear indication that in the majority of cases, a s. 60 order will be a disproportionate interference with the constitutional rights of the medical professional.

**99.** In similar vein, the courts have also emphasised that interim suspension orders should be reserved for “*exceptional cases where a doctor has to be suspended from practice because it is in the public interest that he should*” (per Kelly J. in *Casey v. Medical Council* [1999] 2 IR 534 at 549). The respondent submits that Barniville P. has recently emphasised that the High Court has a wide jurisdiction in dealing with applications under s. 60. This wide remedial discretion serves to underline the fact that an interim suspension order is reserved for only the most exceptional cases where “no other order” will be sufficient to protect the public. The respondent submits that this is not such a case.

**100.** The respondent notes that the function of the court in s. 60 applications is not to make findings of fact or resolve conflicts of evidence in relation to the substantive allegations before the Medical Council. Nevertheless, in cases such as this, where grave allegations amounting to serious criminal wrongdoing have been made against a medical practitioner, it is clear that the presumption of innocence is a very significant factor to be weighed by the court as part of its proportionality assessment. This is particularly so where no criminal charges have been brought as of yet on foot of those allegations, as is the case here, and where the medical practitioner strenuously denies the veracity of those allegations.

**101.** In *Medical Council v. A Medical Practitioner* [2023] IEHC 171 at para. 71, Barniville P. stated that:

*“... the presumption of innocence is, in my view, an important factor to be weighed in the balance as part of the constitutional rights of the practitioner which must be considered by the court”.*

**102.** In an express application of the minimal impairment/least intrusive means element of a proportionality assessment, the President went on to find that:

*“In [considering] whether the nature and seriousness of the allegation and, where applicable, the ensuing criminal charge or charges are such as to give rise to a need*

*to protect the public, the court must consider whether some alternative course of action short of a suspension order would achieve the same objective".*

*That is where the possibility of the medical practitioner providing appropriate undertakings to the court arises. Since an interim suspension order should only be made when no other order or measure will serve to protect the public and since such an order should only be granted in exceptional cases, consideration must be given in each case to whether or not appropriate undertakings should be accepted by the court in place of the interim suspension and other orders." (emphasis added) (paras. 77 – 78).*

**103.** In addition, the respondent contends that the following additional factors ought to be weighed in the balance as part of the court's proportionality assessment:

*"(i) the fact that the respondent has an unblemished record with no adverse findings made against him by the applicant;*

*(ii) the fact that the respondent is a highly respected general practitioner for a significant proportion of the Arab community in [REDACTED]. If the respondent's registration was suspended, this would have a detrimental impact on the specific medical needs of this community;*

*(iii) the fact that there are serious questions to be asked of the veracity and credibility of the complainant given her motivation and the fact that she misled the District Court in relation to the legal basis for her successful application for a barring order under s. 7 of the Domestic Violence Act 2018."*

**104.** In terms of the approach to be adopted by the court, the respondent submits that the court must look at the material in the round and undertake a proportionality assessment to determine whether the draconian measure of an interim suspension order under s. 60 is a proportionate infringement of the respondent's constitutional rights of the highest order: the

respondent's right to earn a livelihood, his right to a good name and reputation, and his right to be presumed innocent of allegations of serious criminal wrongdoing until found guilty. The respondent contends that applying a proportionality assessment to the facts of this case, in circumstances where the respondent has given and complied with undertakings on oath to the court as set out above, it would be disproportionate for the court to accede to the application. In the respondent's submission, this is not a case where "no other order" will serve to protect the community.

**105.** The respondent contends that this is an even stronger case for the court to accept the continuation of undertakings in lieu of an interim suspension order than arose in *Medical Council v. A Medical Practitioner* [2023] IEHC 171. In that case, criminal proceedings were in train against the medical practitioner, whereas here there are none being contemplated, to the respondent's knowledge.

**106.** In conclusion, the respondent submits that a proportionate exercise of the court's discretion in this case would be to continue the undertakings on oath which the respondent has given to the Council and to the court, and to require such further undertakings on oath as the court considers necessary, pending the outcome of the resolution of the fitness to practice proceedings before the applicant.

### **Recent case law**

**107.** I turn now to consider some recent caselaw. The parties are agreed that the recent decision of Barniville P. in *Medical Council v. Bukhari* [2022] IEHC 503 provides an authoritative summary of the principles applicable to a s. 60 application:

*"53. The principles applicable to applications under s. 60 of the 2007 Act are now well established. The High Court has a wide jurisdiction in dealing with such applications and the Court is "not limited to a simple binary choice between either*



*granting or refusing the order: the court may, rather, make whatever order it sees fit” at para 4.48, p.110 (Mills, Ryan, McDowell and Burke, Disciplinary Procedures in the Statutory Professions (2011))*

*54. An order made under s. 60 pending the determination of proceedings under the 2007 Act in respect of a medical practitioner is likely to have significant adverse consequences and to work considerable hardship on the practitioner in terms of his livelihood and reputation. For that reason, it was stated by Morris J. in Medical Council v. Whelan (Unreported, High Court, (Morris J.), 20th February, 2001) that since such an order could have such adverse consequences, the Court “should only make such an order when no other order will serve to protect the community” (at 7). In that case, the Court refused to grant an application for an interim suspension and instead directed that the doctor gave undertakings to the Court on oath to comply with certain conditions.*

*55. In Casey v. Medical Council [1999] 2 I.R. 534, Kelly J. noted that interim suspensions should be “reserved for exceptional cases where a doctor has to be suspended from practice because it is in the public interest to do so” (at 549).*

*56. The conflicting and competing interests involved were described by Keane C.J. in the Supreme Court in Medical Council v. P.C. [2003] 3 I.R. 600. He said:*

*“Undoubtedly, the High Court ... must be satisfied that the public interest requires that this be done and that that public interest outweighs the constitutional right of the medical practitioner concerned to carry on his or her practice and earn his livelihood as a doctor. The High Court is obliged to weigh those two matters before making an order and decide which of the two matters is to bring down the scales, as it were ... ” (at 602)*

57. *The need to carry out this balancing exercise was stressed recently by Irvine P. in Medical Council v. Waters [2021] IEHC 252. She stated (at para. 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.”*

58. *At para. 22, Irvine P. stated that it is clear from the authorities that whether the conduct at issue such as to amount to a threat to the public will depend on the facts of the individual case and that if a suspension order 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”. Later in her judgment in that case, Irvine P. considered the impact of the s. 60 suspension on patients. She considered that the evidence in that case led her to conclude that the health, safety and welfare of the respondent’s patients and the relevant community could only be adequately protected by the making of the suspension order.*

59. *The authorities also make clear that in considering an application under s. 60 of the 2007 Act, the Court must review the Council’s decision to proceed with such an application. The factors to be considered by the Council before applying for orders*

*under s. 60 were identified (in the context of the Nurses Act 1985) by Barron J. in the Supreme Court in O’Ceallaigh v. An Bord Altranais [2000] 4 I.R. 54. The three matters which Barron J. stated had to be considered by the Nursing Board in that case (and which apply equally to the Council) when determining whether an application should be made to the Court for an interim suspension were:*

*(i) the nature of the complaint on which the application for an inquiry is based in terms of the seriousness of the conduct complained of;*

*(ii) the apparent strength of the case against the relevant practitioner; and*

*(iii) 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:*

*(O’Ceallaigh per Barron J. at 96; Medical Council v. F.C.M. [2018] IEHC 616, per Kelly P. at para. 40 and Medical Council v. Waters per Irvine P. at 24).*

*60. With respect to the third factor referred to, it was made clear by Kelly P. in F.C.M. that even if the ultimate outcome of a hearing before the Fitness to Practise Committee resulted in a conditional registration and cessation from practice until certain conditions are fulfilled rather than a strike off, the public interest might nonetheless demand that a suspension order be made pending the determination of the inquiry”.*

**108.** Recent case law also emphasises the breadth of the High Court’s jurisdiction in these applications. The court is not faced with the “all or nothing” choice of refusing or granting a s. 60 order. Rather, the court is empowered under the statute to give to the Medical Council any direction that the court considers appropriate. A judge hearing a s. 60, therefore, has a very wide discretion as to the possible orders it may make in order to achieve justice in the

interim application. In the recent case of *Medical Council v. A Medical Practitioner* [2023] IEHC 171, Barniville P. put the matter as follows:

*“I must at this point, however, stress that that the High Court has a wide jurisdiction in dealing with an application such as this. The court is not faced with the simple binary choice of deciding whether to grant the interim suspension and related orders sought by the Council or to make no order at all. Under s. 60(3)(a) of the 2007 Act, the court may determine a s. 60 application by making “any order it considers appropriate”, including an interim suspension order and may, under s. 60(3)(b), give to the Council “any direction that the court considers appropriate”. The court, therefore, has a very wide discretion and a broad jurisdiction in terms of the possible orders it may make on an application such as this.”*

**109.** I respectfully adopt the summary of the relevant legal principles as set out by Barniville P. in that case. Having done so, it seems to me the key question for the court is whether, on the facts of this particular case, the all-important objective of protecting the public can be achieved by means short of imposing a s. 60 order at this stage.

### **Analysis**

**110.** It is clear that in the present case, the nature and seriousness of the allegations against the respondent, coupled with the acknowledgment that the allegations, if proven, would result in erasure from the medical register (criteria 1 and 3 of *O’Ceallaigh*) are factors that strongly tend in favour of a s. 60 order being made. Less straightforward is the question of assessing how strong is the case against the practitioner (criterion 2 of *O’Ceallaigh*). In his submissions for the applicant, Mr. McDowell makes the argument that, however strong the case against the respondent at the stage of the Medical Council hearing in February 2023, the applicant’s case has now strengthened considerably as a result of objective documentary evidence

becoming available and secondly, as a result of the respondent making a number of admissions in his second affidavit, prompted by the medical records concerned.

**111.** While Mr. McDowell didn't put it as unsubtly as this, the gist of the Medical Council position is that the respondent has been caught out and "tripped up" by the medical records which show that a number of the submissions made on his behalf as recorded on the Medical Council transcript have been exposed as false, and that this has not been adequately explained or addressed in the respondent's replying affidavits. In particular, it is contended that the documentary evidence contradicts the respondent's account with respect to the length of the relationship, whether the complainant was or was not a patient of the respondent, whether he was her treating doctor and referred her for procedures and fertility treatment, whether he knew about, or had a role in her pregnancies and miscarriages, and whether they were married in the Islamic faith.

**112.** The applicant contends that, on a realistic interpretation of the documentary materials, significant inconsistencies in the respondent's account have emerged and have either resulted in the respondent making concessions in his second affidavit or have not been addressed at all. The applicant contends that the respondent has told significant untruths with respect to these discrete issues and that all of this underpins the complainant's account, and substantiates the case being made against the respondent in this application.

**113.** The unspoken premise within the Medical Council's position is that the medical records that are now available demonstrate that lies have been told by the respondent, and that the motive for the lies must be a realisation of guilt as to the rape allegations and a fear of the truth emerging.

**114.** In my view, while it is important to examine in detail the minutiae and significance of the medical records, it is also important not to lose sight of the fact that the complainant's

allegations are being contested in full and that a full hearing will be required before the substance of the allegations can be properly tested and determined.

**115.** Secondly, while issues such as the duration of the relationship, whether the respondent was or was not her treating doctor, the respondent's knowledge of and connection with her pregnancies, his alleged connection with abortions, and whether the protagonists were or were not married, are all material issues, they are in the nature of "satellite" issues in the sense that they are not determinative of the respondent's guilt of the core allegations of rape and sexual assault. At the end of the day, the rape and attempted rape allegations will come down to the question as to which party's account of the incidents will be accepted by the fact-finder. Ultimately, that will be an issue for the fitness hearing and/or the criminal trial.

**116.** A good example of why it is so necessary to leave substantive issues over to a fitness hearing or criminal trial is provided by the text messages that the respondent claims were exchanged between the complainant and a named friend of the respondent. This material, like most of the complainant's medical records, was not available at the Medical Council suspension hearing. According to the translated document provided to the court, the complainant is said to have sent the following message to the third party concerned:

*“[Complainant]: My conditions in order for me to restore my reputation in the public, are: first of all he should divorce his wife, gives me his house, and transfer an amount to my bank that is sufficient for my expenses until I stand up again on my feet.*

*[Other person]: How much is the amount (that you are looking for) ...?*

*[Complainant]: I do not know. I have to think.*

*[Other person]: Don't write such things.*

*[Complainant]: “by the way, divorcing his wife does not mean that I will ever go back to him.”*

**117.** Obviously, this court is not concerned with making any finding or comment on the validity, timing, admissibility or indeed relevance of this alleged exchange of texts. It seems likely, nonetheless, that the document may feature as part of the respondent's defence to the core allegation, in any fitness hearing or criminal trial that may take place in the future. In my view, all such issues are best left over to the substantive hearing of the allegations. I mention the texts issue here simply to emphasise the necessity for substantive issues to await determination at a full hearing.

**118.** In the present case, the Medical Council (understandably) found it very difficult to assess the apparent strength of the complainant's case in light of the conflicting accounts between the complainant and the respondent and the limited information available to the Council at that stage. In fairness, that was at a stage prior to the bulk of the medical records becoming available. Nonetheless, even with the medical records becoming available to the court in this application, it remains difficult for the court to assess the apparent strength of the complainant's case in light of the starkly conflicting accounts between the two protagonists.

**119.** Thirdly, returning to the point pressed by the applicant in both written and oral submissions that the strength of the case against the respondent has increased since the suspension hearing, and that the medical records and the respondent's own affidavit demonstrate that he has told lies, it is important to bear in mind that even established falsehoods on discrete issues are not necessarily determinative of a person's guilt of the core allegations concerned. I want to emphasise that I make that point at a level of principle and generality only because, as I have emphasised earlier, it is not the court's role to make findings on the evidence or to reach conclusions on whether a party has or has not told lies.

**120.** At a level of general principle, and to borrow from the criminal law for a moment, it is correct to say that statements made out of court which are proved or admitted to be false may

in certain circumstances amount to corroboration of the underlying allegation. As Lord Lane LCJ put it in the well – known case of *R. v. Lucas* [1981] QB 720:

*“It accords with good sense that a lie told by a defendant about a material issue may show that the liar knew if he told the truth he would be sealing his fate...”.*

**121.** However, it should also be borne in mind that a lie or deliberate falsehood – even if proven – may not always be indicative of guilt of the crime alleged. According to caselaw over the decades, experience as judges and knowledge of human affairs tells us that sometimes people lie for all sorts of reasons, unconnected to their guilt of the core allegation. Purely by way of examples to illustrate the principle of the point, and not in any sense commenting on the facts of the present case, a defendant may tell a lie in a misguided attempt to bolster up a just defence, or out of personal shame, or out of a wish to conceal disgraceful behaviour from their family or their community.

**122.** For this reason, in the criminal law, a jury will sometimes be given what is known as a “*Lucas* warning” cautioning them along the following lines:

*“To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness.”* (emphasis added)

(See *R. v. Lucas* [1981] QB 720 and see in this jurisdiction the Court of Criminal Appeal’s discussion of the “*Lucas* warning” principles in *J.S. v. DPP* (MacMenamin J.) [2013] IECCA 41).



**123.** The same phenomenon has been observed to occur on the civil side. The well known Court of Appeal judge Peter Jackson LJ observed in a family law case in the UK:

*“People can tell lies about some things and still tell the truth about other things” (Lancashire County Council v M and Ors (2016) EWFC 9, cited by Lord Justice Ben Stephens of the UK Supreme Court in a recently published article in Irish Judicial Studies Journal [2023] Vol 7(2). Of course, this is not in any sense to condone or justify a party telling lies or misleading a court, but simply to note that it has been the experience of judges down through the years that people can sometimes tell lies about some things and still tell the truth about other things.*

**124.** In the present case, the Medical Council submits that the medical records indicate the respondent has told lies, or has failed to provide a complete account, in relation to a number of material issues. These include:

- (i) the length of his relationship with the complainant;
- (ii) the question of whether the respondent was her treating doctor, and whether he referred her for various medical procedures;
- (iii) his knowledge of, and involvement in, her pregnancies and miscarriages;
- (iv) the question of whether they were married in the Islamic faith, and why he told the complainant’s father that they were married.

**125.** Having reviewed all the affidavits in the case including the exhibits and all the medical records painstakingly assembled by the applicant, I have to say that I have significant concerns about the respondent’s position with respect to each of the headings indicated. Indeed, taking the respondent’s position at its height, the court is entitled to have concerns arising from some of the concessions and acknowledgments made by the respondent in his second affidavit. In the second affidavit, the respondent made the following concessions or statements:

- (i) He (untruthfully he says) represented to the complainant's father that they were in fact married (para. 5);
- (ii) He accepts that the position presented to the Medical Council as to the extent and length of the relationship was incorrect (para. 6);
- (iii) He accepts that in his submission to the Medical Council he (wrongly) minimised the nature and duration of the relationship (para. 6);
- (iv) He accepts that the averment at para. 16 of his first affidavit, that he had only referred the complainant for medical treatment on one occasion, "*is also clearly incorrect*" (para. 7);
- (v) He accepts that the medical records show that the complainant was seen by him for medical reasons "on more occasions than other doctors" (para. 8).

**126.** In relation to the second last entry on the list I have just outlined, I find it difficult to reconcile the clear averment made by the respondent at para. 16 of his first affidavit, with the position now being contended for by him in his second affidavit. In his first affidavit the respondent had averred as follows:

*"For the avoidance of doubt it is not correct that I was the complainant's GP during the time we were in a relationship and I believe that on all occasions the complainant was seen by another doctor in the practice, save on one occasion I believe I may have referred her to the hospital for a fertility treatment."*

**127.** Widening the lens for a moment, for all these reasons, it seems to me the Medical Council was entitled to have concerns about the patient safety and welfare issues presented by this case and was undoubtedly justified in bringing the s. 60 application. Moreover, the applicant was and is entitled to have concerns about what has emerged since the Medical Council hearing from the various medical records that have become available, and from the adjustments in the respondent's position as set out in his second affidavit. It seems to me the

Council was entitled to take the view that the protection of the public required the orders being sought in the application. However, that conclusion is not binding on the Court. The case law and the legal principles summarised by the President make clear that the court must decide whether the interim suspension order is necessary to protect the public, or whether some lesser form of orders or conditions will achieve that critical objective. As the case law makes clear, the court is required to carry out a balancing exercise for this purpose, weighing in the scales the competing interests that arise.

**128.** Carrying out that exercise, in the first instance I attach significant weight to the seriousness of the allegations and the likelihood/inevitability that, if proven, they would result in erasure from the register.

**129.** Secondly, I attach considerable weight to the fact that the respondent has chosen to “row back” on a number of points covered in his submissions at the suspension hearing and that, to use neutral language, in his later affidavit he has adjusted his position on a number of discrete issues. The issues in question are material in my view and inform the context in which the complainant makes her allegations.

**130.** Thirdly, I have also considered the financial aspect of the case and I attach some weight to the financial implications of a suspension order for the respondent. It seems to me the financial hardship issue is not all one-way in this case because, in contrast with other cases, the respondent does not appear to be solely and exclusively reliant upon the income which he receives from his medical practice. The income that is “in play” here is the income generated by the respondent working one day a week in his employer’s practice. In his first affidavit (para. 28) the respondent stated that while his income is modest (about ██████ per month after tax), it provides for himself and his wife who also works part time and earns a similar income. The respondent averred that he and his wife have been lucky that their landlord has maintained a modest rent given the rise in rental prices in recent years. He

averred that he could confidently say that without the income that he derives from his job as a GP with [REDACTED] *“it would have a significant impact upon the family income”*.

**131.** It should be noted that since that averment, the respondent has indicated in his second affidavit that he is prepared to give an undertaking to effectively reduce his hours further by giving up the one morning a week in the [REDACTED] Counsel for the applicant contends that because the respondent is only working part time and that effectively the work in issue is one day per week in a GP’s practice, that this reduces the weight which the court should attach to the financial hardship factor. As it is put in the applicant’s written submissions:

*“The infringe on his professional existence of a suspension would necessarily be lower than the equivalent imposition on a doctor working full-time”*.

**132.** As a matter of financial mathematics, that is correct insofar as it goes. However, it does not take account of the respondent’s right not to be subjected to unnecessary reputational harm or his right, all things being equal, to practice medicine and derive from that role personal satisfaction and social standing.

**133.** It seems to me that I should take some account of the fact that the respondent’s wife is also not working full time, albeit [REDACTED] their children are reared and grown up. Were I to make the interim suspension order that is sought here, the respondent would be prohibited from engaging in the practice of medicine and he would have no income from the practice for so long as the suspension endures. As the period in question is likely to last some number of years, as opposed to months, it seems to me that I should weigh the financial hardship question in the scales as a factor tending against a suspension order.

**134.** It seems to me the main question for the court is whether, on an overall view, on the facts presenting in this application it would be proportionate in the circumstances to make the suspension order sought. This question necessarily requires consideration of whether the

objective of protecting the public can be achieved by other less draconian means, short of a s. 60 suspension order. In my view, this is a marginal case and I am satisfied that, at the very least, significant conditions should be put in place in relation to the respondent in order to ensure, so far as is possible, the protection of the public. However, for reasons that I will presently outline, I have come to the conclusion that it is not necessary for the court to go so far as granting an interim suspension order at this juncture, preventing the respondent from practising medicine until the fitness to practice hearing and/or any criminal trial has been determined. I am influenced by the caselaw which says that s.60 orders should only be made where “... *no other order will serve to protect the community*” per Morris J. in *Medical Council v. Whelan* (Unrep. High Court, 20 February 2001) and that orders of this type should only be made in “*exceptional cases*” (see also *Medical Council v. Bukhari* [2022] IEHC 503 per Barniville P. at paragraph 68). I also attach significant weight to the fact that, as matters stand, no criminal charges have been brought and, though it is now nine months since the complainant reported her allegations to the Gardai, the respondent has still not been arrested or questioned about the allegations.

**135.** With some hesitation, therefore, I take the view that the balance of justice in the case favours declining the interim suspension order sought and instead putting in place a strict regime of undertakings and conditions.

**136.** In coming to that view, I have been influenced principally by the following factors:

- (i) A significant interval of time – in all likelihood running to some years not months - will elapse before any criminal trial is held or a fitness to practice hearing takes place;
- (ii) As I have stated, no criminal charges have been brought as yet and the respondent has not been arrested or questioned by An Garda Síochána;
- (iii) As matters stand, the Director of Public Prosecutions has not directed charges.

This means that no independent officer or body has formed an assessment on whether

the prosecution case is of sufficient strength to merit a prosecution against the respondent;

(iv) There is a paucity of information before the court concerning the progress of the Garda investigation. For instance, there is no information as to whether it is intended to send a file to the Director of Public Prosecutions; no information as to whether any such Garda file is near completion; and no hard information as to a likely trial date, were charges to be brought.

Quite properly, it was acknowledged on behalf of the applicant that if a suspension order was made, it could endure for a significant number of years, particularly in circumstances where no charges have been brought and the respondent has not been interviewed by the Gardai. In the view of the court, this factor tips the scales significantly against the appropriateness of making an interim suspension order, and points in favour of dealing with the matter by way of a strict regimen of undertakings and conditions, with liberty to the parties to apply;

(v) Were criminal charges never to be brought, or were such charges to be brought but ultimately fail at a criminal trial, the respondent would suffer a significant injustice were a s. 60 order to be made, depriving him of revenue from the medical practice for the period concerned, and causing him significant reputational damage in the interim;

(vi) The constitutionally enshrined rule known as the presumption of innocence ought to be given real and practical effect. Therefore, it should be presumed that the respondent is innocent of the criminal allegations. Obviously, this factor, of itself, would not preclude a s.60 order being made, but it is nonetheless an important matter to be weighed in the scales.

(vii) The mere fact that no charges have been preferred does not prevent the respondent from relying upon the constitutional presumption. Were it otherwise, that

would mean a person not facing criminal charges would be viewed as being in a worse position than a person facing criminal charges, which would be illogical and unfair;

(viii) The respondent has to date complied with the undertakings that he previously gave to the High Court;

(ix) While there are a number of allegations in play, by far the most serious – and the reason why the applicant has brought the s. 60 application – are the rape and sexual assault allegations. While the satellite issues that I have referenced earlier are important and material, they do not displace the fact that the respondent denies the rape and attempted rape allegations in full and he is entitled to the presumption of innocence with respect to such allegations.

(x) While the suggested inconsistencies and “row – backs” being relied upon by the applicant involve issues that are material, they are not dispositive of the question of guilt or innocence. In my view, it simply is not possible at this juncture to form a reliable assessment of the strength of the prosecution case on the rape and sexual assault allegations.

(xi) While the allegations made by the complainant are of the utmost seriousness, they do not involve allegations of clinical incompetence or immediate danger to the public such as to give rise to the more usual concerns for patient safety and protection that might arise, for example, from multiple unexplained deaths in a hospital setting or recurring medical misadventure. That is not in any way to minimise the seriousness of the complainant’s allegations, but simply to acknowledge they occupy a different place in the overall spectrum of possible allegations.

(xii) I also take in to account the affidavit of the respondent’s employer, [REDACTED] who says that she has worked alongside the respondent for more than fifteen years and has always found him to be entirely professional, courteous and understanding in his

dealings with patients and staff. She also says that to the best of her knowledge he has not been the subject of any complaints of any significance over that time regarding his dealings with patients or staffing in the practice (other than, obviously, the present allegations of the complainant). I take into account also the fact that the applicant has not provided evidence to contradict the positive reference provided by [REDACTED].

(xii) I also take into account the unchallenged averment of the respondent that he has never been the subject of any adverse finding of the Medical Council or any equivalent body in any other country.

**137.** In the present case, the Medical Council – understandably in my view - found it very difficult to assess the apparent strength of the complainant’s case in light of the conflicting accounts between the complainant and the respondent and the limited information available to the Council at that stage. In fairness, that was at a stage prior to the bulk of the medical records becoming available. Nonetheless, even with the medical records becoming available to the court in this application, it remains difficult for the court to assess the apparent strength of the complainant’s case in light of the conflicting accounts between the two protagonists.

**138.** During the hearing, I asked the applicant to outline the conditions and undertakings that they would wish to see put in place, were the court not minded to grant the s. 60 order. Entirely without prejudice to its position that the appropriate order in the circumstances was a s. 60 suspension order, the applicant indicated in correspondence after the hearing that the court might consider requiring the respondent to provide the following undertakings:

*“1. Not to engage in the practice of medicine for more than 6 hours per week pending the conclusion of the complaint under Part 7, and if applicable, Parts 8 and 9 of the Medical Practitioners Act 2007, as amended.*

*2. Not to engage in the practice of medicine in accordance with No. 1 as set out above, other than at the [REDACTED]*



3. *Not to examine female patients in the absence of a chaperone pending the conclusion of the complaint under Part 7, and if applicable, Parts 8 and 9 of the Medical Practitioners Act 2007, as amended.*
4. *To provide the Preliminary Proceedings Committee of the Medical Council and Fieldfisher Ireland LLP with an update, directly or via [the respondent's] solicitor (if [he retains] a solicitor), every three months with:*
  - a) *The identity and contact details of those who will carry out the role of a chaperone for the next three months, and*
  - b) *A complete diary to show the chaperones who have been on duty for the previous months and the specific dates and/or times they were on duty.*
5. *To notify the Preliminary Proceedings Committee of the Medical Council and Fieldfisher Ireland LLP at least 5 working days in advance of any changes to those carrying out the role of independent chaperone, and provide them with the identity/contact details of any alternative chaperones;*
6. *To provide the Preliminary Proceedings Committee of the Medical Council and Fieldfisher Ireland LLP with an update directly or via [the respondent's] solicitor (if [he retains] a solicitor), within a period of 7 days, if [the respondent] is charged with any criminal offence in relation to the complaint made by [the complainant];*
7. *In the event that criminal charges are brought against [the respondent] in respect of the complaint made by [the complainant], to provide the Preliminary Proceedings Committee of the Medical Council and Fieldfisher Ireland LLP with an update, directly or via [his] solicitor (if [he retains] a solicitor), every three months in respect of the criminal charges.*
8. *Not to contact the complainant, her family or circle of friends.*

*9. Not to prescribe any medication save in accordance with the HSE guidelines and the Guide to Professional Conduct and Ethics for Registered Medical Practitioners (Amended) 8<sup>th</sup> Edition, 2019.*

*10. To fully co-operate and engage with the Preliminary Proceedings Committee and if applicable, the Fitness to Practice Committee.*

*11. To notify the Preliminary Proceedings Committee of the Medical Council and Fieldfisher Ireland LLP within 48 hours in the event that [the respondent has] breached the undertakings.”*

### **Conclusion**

**139.** I will list the matter for further submissions once the judgment has been delivered for the purpose of finalising the terms of the court’s order, to hear submissions on the final formulation of the undertakings to be given, and for liberty to be granted to the Medical Council to publish the fact of the undertakings and make such further application as may be necessary.

**140.** I will also hear the parties on the issue of making redactions to this judgement, to preserve confidentiality and to prevent disclosure of the identity of the complainant. In the meantime, pending the making of suitable redactions, it is very important that this unapproved judgement should not be circulated beyond the parties.

Signed:

Micheál P O’Higgins

Post-script: On the 30<sup>th</sup> November 2023 I directed that the redactions set out within should be made in order to prevent disclosure of the complainant’s identity.

Appearances:

Hugh McDowell BL instructed by Fieldfisher Ireland LLP for the applicant.

The respondent appeared as a litigant in person.