

[APPROVED]

[REDACTED]

THE HIGH COURT

[2024 IEHC 731]
[2024 No. 510 MCA]

IN THE MATTER OF SECTION 44 OF THE DENTISTS ACT 1985
AND IN THE MATTER OF A REGISTERED DENTIST
AND ON APPLICATION OF THE DENTAL COUNCIL

BETWEEN

DENTAL COUNCIL

APPLICANT

AND

A DENTIST

RESPONDENT

JUDGMENT of Mr. Justice David Barniville, President of the High Court, delivered on the 1st November, 2024

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1. Introduction

1. This is my judgment on an application brought by the Dental Council (the “Council”) for various orders by way of interim suspension pursuant to s. 44 of the Dental Council Act 1985 (the “1985 Act”). The orders are sought by the Council in relation to the respondent who is a registered dentist. They include orders suspending the registration of the respondent’s name in the Register of Dentists and prohibiting the respondent from engaging in the practice of dentistry. The Council requests that those orders continue until the conclusion of the complaint and inquiry process and related steps under Part V of the 1985 Act, or for such period as the court may specify. Other ancillary orders are sought including orders permitting the Council to communicate the terms of the order to the dental practitioners and staff at the respondent’s dental practice; to any person or body contacting the Council regarding the respondent and to the General Dental Council (being the competent authority for dentists in the United Kingdom). In addition, an order is sought requiring the respondent to offer to refer all patients undergoing treatment by him to a suitably competent dental healthcare professional and to provide patients with a copy of their records if the respondent is given clear written instructions from the patient to do so. Finally, the Council seeks liberty to reflect any suspension of the respondent on its website.

2. The Council’s application was made following a meeting of the Council on 4th October 2024, in which the Council decided to make the application to the court. The Council’s application first came before the court on 16th October 2024. An application was made on

that date on behalf of the respondent for an adjournment to allow him to put in a replying affidavit. In circumstances where the Council maintained that the matter was urgent and that issues of public protection were involved, I granted the adjournment but listed the matter for hearing the following week, on 22nd October 2024, with a direction that the respondent file any replying affidavit by 18th October 2024. The respondent filed his replying affidavit within the time directed and the application was heard by me on 22nd October 2024. I indicated at the conclusion of the hearing that day that I would give my judgment on 30th October 2024.

3. On 24th October 2024, the registrar received a communication from the respondent's solicitors that he wished to put in a supplemental affidavit exhibiting testimonials, a number of letters of reference and further evidence of the impact of any suspension order made in relation to the respondent. The Council did not oppose that course of action but requested a short hearing in order to make some submissions in relation to the new material. I facilitated the parties with a further short hearing on the afternoon of 25th October 2024. Having heard further submissions from the parties that afternoon, I indicated that I would now give my judgment on 1st November 2024.

2. Overview of Decision on the Application

4. I have carefully considered all of the evidence and the helpful submissions made on behalf of the Council and on behalf of the respondent and have concluded, on balance, that in the exercise of the discretion which I have under s. 44 of the 1985 Act, I should grant the orders sought by Council and should decline to accept the undertakings offered by the respondent.

5. For reasons which I will set out in greater detail below, I am satisfied that applying the applicable legal principles (which are not in dispute between the parties) and without making

definitive findings of fact in relation to the substance of the allegations against the respondent, the public interest does require that I make the orders sought. I am, however, conscious of the fact that no decision has yet been taken by the relevant statutory authority as to whether to initiate a criminal prosecution against the respondent in respect of the matters which have given rise to the allegations before the Council. If a prosecution is brought against the respondent, it may take some time for that prosecution to be determined and, in the meantime, it may not be possible to complete any Fitness to Practise process under the 1985 Act. I intend, therefore, to review the position in February 2025. The orders I make will last until further order of the Court. At this point in time, however, I am completely satisfied that significant issues of public safety and patient safety arise and that it is necessary and appropriate that I make the orders sought by the Council.

3. Factual Background and History

6. The background to the Council's application is set out in the affidavit sworn by Dr. Paul Leavy, a member of the Council, on 10th October 2024.
 7. The Council is a statutory body which was established under the 1985 Act. The Council established and maintains a register of dentists ("the Register"). The respondent's name has been listed on the Register since [REDACTED] 2020. While the address for the respondent listed in the Register is an address in the [REDACTED], the respondent has stated on affidavit that he has, in fact, been residing in Ireland since 2011 and has been practising dentistry in the [REDACTED] area since December 2021.
 8. The Council's concerns in relation to the respondent, so far as this application is concerned, date back to March 2024.
- [REDACTED]
- [REDACTED]

[REDACTED]. The respondent has also adopted the position that since allegations of criminal conduct have been made and are the subject of an investigation by the relevant statutory authority, the Health Products Regulatory Authority (“HPRA”), he has the benefit of the presumption of innocence and enjoys the privilege against self-incrimination and is not required to engage in with the substantive allegations made against him [REDACTED]. As will be seen, the respondent’s solicitors have stated on many occasions that the respondent denies any wrongdoing. For the reasons just mentioned, however, he has not engaged substantively with the allegations.

9. I was provided with a [REDACTED]

[REDACTED]
[REDACTED].

10. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

In its letter of 19th March 2024, the Council requested [REDACTED] to furnish a written statement to the Council by 3rd May 2024. I was not provided with a copy of that prior correspondence in [REDACTED] statement on 7th May 2024.

11. In her statement, [REDACTED] said that she [REDACTED] presented herself to the respondent as the owner of a named beauty salon through WhatsApp communications with a mobile phone number which appears on a website [REDACTED].

Although not said in the statement, the mobile number also appeared on the Facebook page for the respondent’s dental practice, [REDACTED]. She said she asked to buy “*Nabota*

toxin”, a botulinum toxin product, which had been advertised for sale on the supplies section of the website. The statement continued:

“I received a reply to my enquiry confirming that the product referenced was available for sale and that the postal fee could be deferred if collected in person. We agreed a price, date and time for collection. When I arrived at the premises in the [REDACTED] [REDACTED], the person who identified himself to me as [REDACTED], asked me to fill out the details of my business on a form. I did as he requested. He then handed over the package which was branded [REDACTED] which contained a glass container with labelling which stated that the product was [REDACTED]. At no point did he ever ask if I was a qualified doctor or dentist, nor did he ask me for any documentation or prescription, nor did he ask me for any documentation or prescription, nor did he ever ask if I had someone working with me who had the qualifications to administer botulinum toxin. On this same visit, he confirmed that there were a wide range of products that he could supply. He then stated that in future, a different mobile number was to be used to contact him when ordering supplies and he said that he had a different contact number for selling supplies of that kind.”

12. [REDACTED] then referred to a second visit on [REDACTED], to the same premises which again followed communication on WhatsApp. She said:

“...The person who identified himself to me as [REDACTED] sold me products which he informed me were Lidocaine and Liporase. Both Lidocaine and Liporase were advertised for sale on the supplies section of [REDACTED]. During this visit he encouraged me to buy products in the future stating he was getting more stock of different toxins. He offered bigger deals, and I took this to mean that he would charge less per unit the more that I bought.”

13. ██████ stated that on 16th January 2024, following further WhatsApp communications, she attended at a different location, ██████, where she met the respondent. On that occasion, ██████ said that the respondent sold her Ozempic (a well-known antidiabetic medication sometimes also prescribed by doctors for weight loss). She said that on that occasion, the respondent informed her that he was training individuals to administer Botox. ██████ said that she asked: *“if the women working at [her] salon could avail of his training and he agreed”*.

14. Attached to the statement were print outs from the Facebook page of ██████ where the respondent currently operates his practice, which referred to the mobile phone number on which ██████ said she contacted the respondent.

15. On 5th June 2024, the Council furnished a copy of the statement to the respondent and asked him to submit any comments or observations and any other information he felt appropriate by 3rd July 2024, for the Council to consider. It was noted that since a statutory process had commenced, the respondent might want to consider taking advice before responding to the Council. On 2nd July 2024, the respondent’s solicitors requested a further three weeks to reply. They stated: *“From instructions supplied to date, our client denies any wrongdoing”*.

16. The extension requested was granted and a reply was requested by 24th July 2024. The respondent’s solicitors wrote on 24th July 2024, noting again that the respondent denied any wrongdoing. They stated that they were engaging with the HPRA in an ongoing criminal investigation by that office. They requested the Council’s processes (including any Fitness to Practise inquiry) be held over until after the criminal investigation was concluded which they hoped would happen *“in the short term”*. They also requested certain information from the Council.

17. The Council replied on 29th July 2024 offering the respondent an opportunity to make a submission to the Council and noting that consideration was being given to the Council becoming the complainant at a meeting to be held on 16th September 2024. The Council wrote again on 23rd August 2024, seeking confirmation as to whether respondent wished to make a submission for consideration by the Council in circumstances where it would soon be considering whether to become the complainant in respect to the matters arising from the correspondence [REDACTED]. In response to the respondent's solicitors' request that the matter be held over by the Council until the conclusion of any criminal investigation, the solicitors were asked to confirm whether the respondent was prepared to provide to the Council a written undertaking not to engage in the practice of dentistry in this jurisdiction until the conclusion of the Council's complaints process.

18. The respondent's solicitors replied on 12th September 2024. They referred to their previous correspondence and noted that the respondent "*has repeatedly and consistently denied any wrongdoing*". They also pointed out that they respondent had attended at the offices of the HPRA on 15th July 2024 "*on an entirely voluntary basis*" and that they were "*hopeful that this investigation will conclude in the short term*". They submitted that it would be inappropriate and premature for the Council to become the complainant in the matter and contended that there was no legitimate basis for a complaint and no sufficient basis for holding an inquiry. They further contended that it was extremely unlikely that any meaningful steps could be taken where a criminal investigation was pending. They referred to the prejudice to the respondent if a complaint were to be made and if the matter were to be held over for any period of time and noted that this would be a source of significant reputational damage to the respondent and unlawfully and disproportionately interfere with his constitutional right to earn a livelihood. Since the respondent had vehemently denied any wrongdoing on his part, and given that his practice as a dentist is his livelihood, the

respondent's solicitors stated that the respondent was not agreeable to providing an undertaking not to engage in the practice of dentistry. They contended that there was no basis for such an undertaking "*particularly where no member of the public has made a complaint in respect of his practice and no findings have been [made] against him*".

19. The Council wrote again to the respondent's solicitors on 13th September 2024, pointing out that the Council would shortly convene to consider making an application to the High Court pursuant to s. 44 of the 1985 Act and that they would be informed when a date for the Council meeting was confirmed.

20. On 18th September 2024, the Council sought an update from the HPRA on the status of its investigation. The HPRA provided information in response the following day. In its response, it stated that the HPRA was conducting an investigation into the respondent and another dentist following [REDACTED] during which a number of alleged breaches of the Medicinal Products Regulations were identified. The alleged breaches referred to by the HPRA were that the respondent had:

- (i) Supplied or offered to supply [REDACTED] prescription only medicinal products without prescriptions contrary to Regulation 5, of the Medicinal Products (Prescription and Control of Supply) Regulations (S.I. No. 540/2003), (as amended);
- (ii) Placed unauthorised medicinal products on the market by providing [REDACTED] [REDACTED] with the product [REDACTED] which is not authorised for supply in this jurisdiction contrary to Regulation 6 of the Medicinal Products (Control of Placing on the Market) Regulations (S.I. No. 540/2007), (as amended);
- (iii) Supplied by wholesale to [REDACTED] the medicinal product [REDACTED], contrary to Regulation 5 of the Medicinal Products (Control of Wholesale Distribution) Regulations 2007 (S.I. No. 538/2007), (as amended). It was

suggested that was a wholesale transaction as [REDACTED] stated she was running a business and wanted these products to supply to her customers. The [REDACTED] was not the end user. The respondent (and another named dentist) does not hold a wholesalers authorisation issued by the HPRA; and

- (iv) Advertised the prescription-only medicinal product “Botox” at their business premises contrary to Regulation 9 of the Medicinal Products (Control of Advertising) Regulations 2007 (S.I. No. 541/2007), (as amended).

21. It was noted that the HPRA investigation was ongoing and that if sufficient evidence was obtained, a prosecution may be brought and the Council would be notified.

4. Council Meeting of 4th October 2024

22. The Council met on 4th October 2024, to consider whether to bring this application to the High Court and whether to become the complainant in the matter. The respondent attended the meeting and was represented by solicitors and counsel. I have been provided with the transcript of that meeting. The Council heard submissions from counsel for the Registrar of the Council and from counsel for the respondent and also received advice from its legal assessor. [REDACTED]

23. The Registrar’s counsel submitted that there was a good basis for the Council to bring an application under section 44. It was submitted that such an application was necessary in circumstances where there was a threat to the health and welfare of the public. It was submitted that the matters raised [REDACTED] were very serious and appeared to show that the respondent was supplying medicines when he is not a pharmacist, that he was supplying prescription-only medicines and unlicensed medicines including unlicensed botulinum toxins, that those were being supplied to a person who did not have a prescription and that he was offering the wholesale supply of prescription only medicines effectively for

onward supply to members of the public, (being Lidocaine, Liporase and Ozempic). In those circumstances it was contended that there were serious risks and threats to the safety and welfare of the public. It was also submitted that while the allegations [REDACTED] did not relate directly to the patients of the respondent, he was dealing with the products in question in the context of his professional practice as a dentist. It was said that [REDACTED] attended at his dental practice and that there were patients on the premises when she was offered and sold the various products. The Registrar contended that there were “*clearly elements of dishonesty*” and “*effectively a black market*” supply of medicines for financial gain.

24. The respondent’s counsel urged the Council not to decide to make the s. 44 application. She contended that there was no risk of immediate danger to the public for two reasons. First, she argued that the allocations did not relate to the treatment patients of the respondent or concern interactions or treatment of patients and that that was significant. Second, she contended that the chronology of the case demonstrated that there was no immediate danger to the public and referred to the fact that [REDACTED], the respondent was not first written to until 5th June 2024, and that by the time of the Council’s meeting it was seven months since [REDACTED] and in the meantime the respondent had been practising without any restrictions. Counsel also noted that the respondent was prepared to give certain undertakings to the Council which did not involve an undertaking not to engage the practice of dentistry but which, she submitted, should be sufficient to address the Council’s concerns without the need for any application under s. 44.

25. Having considered these submissions and having obtained the advice of its legal assessor, the Council decided to make the application to the High Court under s. 44. It also decided to become the complainant in Fitness to Practise proceedings against the respondent. The reasons for the Council’s decision to make the application can be summarised as follows.

26. First, the Council considered that the allegations [REDACTED] were “*extremely serious*” and that they went “*directly to the protection of the public*”.

27. Second, while noting that an application under s. 44 should be a “*last resort*” and should only be made “*where no other order will protect the community*”, the Council was satisfied that an application was necessary in this case. The Council was satisfied that the alleged conduct may be related directly to the respondent’s practice as a dentist where he is authorised to prescribe medicinal products and where the products allegedly supplied by him to [REDACTED] were for onward administration to members of the public that were not his patients and that caused cause “*real concern*” to the Council. The Council was further satisfied that if it was wrong in the view that the alleged conduct was directly related to the respondent’s practice as a dentist, it was satisfied that there was an indirect connection warranting the making of a s. 44 application. The Council did not accept the submissions made on behalf of the respondent that the allegations did not constitute an immediate danger to the public.

28. Third, the Council made clear that it was making no findings in relation to the allegations but was satisfied as to the strength of the case for the purpose of bringing the application and that that was particularly the case considering the video footage shown to the Council.

29. Fourth, the Council was satisfied that if the matter proceeded to inquiry before a Fitness to Practise Committee and in the event of adverse findings, it is likely that the sanction ultimately imposed would be suspension or cancellation and that that justified an application being made under s. 44.

30. Fifth, the Council was not satisfied that the respondent had “*demonstrated any insight or understanding as to the nature and seriousness of the allegations*”.

31. Sixth, with respect to the undertakings offered, the Council did not consider that the undertakings offered met the seriousness of the allegations or would sufficiently protect the public, particularly considering the alleged lack of insight by the respondent. It further noted that an undertaking to the Council was not as readily enforceable as an undertaking to the court.

32. Seventh, the Council considered the respondent's constitutional rights, including his right to earn a livelihood (and the consequences for him and his family in the event that an order were made under s. 44) and his right to a good name and also the presumption of innocence enjoyed by the respondent. However, it was satisfied that the risk to public was such that, on balance, it was appropriate to make the application.

33. Eighth, the Council considered the issue of delay and, [REDACTED], it was satisfied that the Registrar for the Council had engaged with the respondent in the period since then seeking his observations and a voluntary undertaking. In any event, it was satisfied that if there was a delay, that would not be a sufficient reason not to apply to the court where there was, in its view, an immediate risk to the public.

34. The Council then made its application on 16th October 2024, and it was heard by me on 22nd and 25th October 2024.

35. The evidential basis for the Council's application was set out in Dr. Paul Leavy's affidavit (the contents of which I have summarised earlier). A further affidavit was sworn on behalf of the Council by Eimear Burke on 15th October 2024. [REDACTED]

[REDACTED]

[REDACTED]

5. Evidence relied on by the Respondent

36. The facts on which the respondent relied in resisting the Council's application were set out in his replying affidavit of 18th October 2024 and in the supplemental affidavit which he swore on 25th October 2024. In his first affidavit, the respondent explained that while he is originally from the [REDACTED], he has been residing in Ireland since [REDACTED] and resides in the town where his practice is located. He received a Bachelor of Dental Surgery from [REDACTED] [REDACTED] in [REDACTED] and was registered on the Register of Dentists on [REDACTED] 2020. He initially practised dentistry at [REDACTED] from [REDACTED] to [REDACTED] [REDACTED]. That is where the first two encounters between [REDACTED], and the respondent allegedly took place. The respondent currently operates his practice (with another dentist) in [REDACTED], where he has been practising dentistry since [REDACTED] [REDACTED]. This is the place at which the third encounter between [REDACTED] and the respondent is alleged to have taken place.

37. The respondent stated that that practice is the only practice in the town which has a population of approximately [REDACTED] people. His practice includes a number of disciplines including general dentistry, fixed orthodontics, fixed and removable prosthodontics and adhesive cosmetic dentistry. The respondent states that he has [REDACTED] registered patients and works 40 hours per week.

38. The respondent stated that he did not receive any correspondence from the Council in relation to [REDACTED] until 5th June 2024 (three months after [REDACTED]). He explained that in the period since then he has been practising without restriction and has continued to build his practice.

39. In terms of his personal circumstances, the respondent stated that he married his wife in 2023. He said that three members of his family depend on him for financial support ([REDACTED]). The respondent explained that he

relies on income earned as a dentist to support himself and to provide financial assistance to his family. If his registration were suspended pending completion of the Council's complaint and inquiry process, he would have no means of supporting himself or financially assisting his family. He was concerned that any Fitness to Practise process would be considerably delayed due to the ongoing criminal investigation by the HPRA. He said that it could be a matter of years before any Fitness to Practise inquiry could proceed to hearing and that, if criminal proceedings were brought against him, they could take up to a year and a half to conclude (if brought on a summary basis) or up to three years (in the event of indictable proceedings). That, he said, would seriously affect his constitutional right to earn a livelihood and his ability to support and maintain his dependants. He asserted that a suspension would be devastating for him from a personal and professional perspective.

40. With respect to the allegations made ([REDACTED]), the respondent noted that he enjoys the presumption of innocence and a privilege against self-incrimination and that he is not required to and should not engage with the substantive allegations in light of the fact that he is currently the subject of an ongoing criminal investigation. He did, however, note that he continues to deny the allegations "*in the strongest possible terms*".

41. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

42. The respondent further took issue in his affidavit with the Council basing its decision to bring this application on, among other things, a finding that he had failed to demonstrate "*any insight or understanding as to the nature and seriousness of the allegations*". He contended that this suggested that the Council had already predetermined the issues which

would be required to be considered at any Fitness to Practise inquiry and disregarded the presumption of innocence to which he is entitled. The respondent stated that he fully acknowledged and accepted the seriousness of the allegations made against him and, for that reason, he was prepared to offer undertakings to the Council at the meeting on 4th October 2024.

43. The respondent confirmed that he was prepared to provide those undertakings to the court and believed they should be sufficient to assuage any concerns which the Council may have. The respondent was (and is) prepared to undertake to the court as follows:

- (i) not to supply or offer for supply any unlicensed medicinal products to any person;
- (ii) to administer prescription only medicinal products solely to patients within the scope of his practice as a dentist;
- (iii) to furnish a list of patients treated in a suitably redacted form and any prescription only medications administered for the purpose of treatment to the Council on the last day of every month;
- (iv) to allow the Council, during normal business working hours, to carry out inspections, by an appropriate person or persons nominated by or on behalf of the Council, to ensure that his clinic is being operated in a manner compliant with the 1985 Act and that all persons working in the clinic are appropriately qualified and working within the scope of their practice; and
- (v) to attend any meeting convened by the Council on reasonable notice to review the above undertakings.

44. The respondent also stated that he was open to providing any further undertaking which the court might consider necessary for the purpose of supervising his practice, short of an

undertaking not to engage in the practice of dentistry which, he said, would have a devastating impact on himself and his family.

45. In a supplemental affidavit sworn on 25th October 2024, the respondent exhibited what he referred to as “*testimonials*” from three of his patients and the practice manager of his dental practice as well as evidence of the involvement of the practice in the local community.

46. One of the testimonials relied on is dated 28th August 2024, and is from a patient based in [REDACTED] who said that he was receiving braces treatment from the respondent and was in the middle of that treatment. He said that the respondent was the only dentist in [REDACTED] to offer the service and he could not get it anywhere else. A second testimonial dated 29th August 2024, is from a person living in [REDACTED] (several kilometres from the respondent’s dental practice) who said that she and her friends and family have been seeing the respondent for more than four years “*for all our dental, cosmetic and facial aesthetics*” and are very satisfied with the care they have been receiving from him and would highly recommend the respondent to anyone. The patient said that [REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]. The patient said that she was still attending the respondent’s practice, intended doing so for as long as possible, and was happy with all of the work carried out for her by the respondent.

47. The third testimonial, dated 24th October 2024, is from a person in [REDACTED] who has been receiving orthodontic treatment from the respondent at his clinic since February 2024 and has another year to go with that treatment. She was complimentary of the service received from the respondent. She said that she understood that there was a [REDACTED]
[REDACTED]
[REDACTED]

In any event, she said that she had no concerns with

the service she has been receiving from the respondent, that he is the only dentist in the area offering the service and that it would not be possible for her to travel to another clinic.

48. In a note addressed to the court dated 24th October 2024, the respondent’s practice manager (a qualified dental nurse who has been working with the respondent since March 2024) said that she was aware [REDACTED] [REDACTED]). She asked that the respondent be permitted to continue working as a decision to suspend him would have detrimental effects for the patients of the practice who are receiving ongoing treatment from him. She stated that “*no other dentist here does braces, and no one will continue his treatments*”. She seems here to be referring only to the respondent’s dental practice, and would not appear to be in a position to make that statement in respect of any other practice. The practice manager was concerned that patients would be left stranded and would not receive necessary treatment. She was also complimentary of the respondent stating that he is “*hard-working, works long hours, always tries to fit in dental emergencies*” and that a lot of people need his services. Finally, the respondent relied on a communication from a local GAA club, to which, apparently, the respondent and his practice provide support.

49. That is the evidence which is before the court for the purposes of the Council’s application. Before summarising the arguments advanced by the parties and outlining my decision and reasons, I should briefly summarise the legal principles which are applicable to an application such as this, under s. 44 of the 1985 Act.

6. Section 44 of 1985 Act: Summary of Applicable Legal Principles

50. Section 44 of the 1985 Act provides as follows:

“(1) *Whenever the Council is satisfied that it is in the public interest so to do, the Council may apply to the High Court for an order in relation to any person registered in any register maintained under this Act that, during the period*

specified in the order, registration of that person's name in that register shall not have effect.

- (2) *An application under this section may be made in a summary manner and shall be heard otherwise than in public.*
- (3) *The High Court may make, in any application under this section, such interim or interlocutory order (if any) as it considers appropriate.”*

51. There was no significant disagreement between the parties as to the legal principles to be applied to this application. Those principles have been considered in a number of different cases under a number of different statutory provisions applicable to various regulated professions including medical practitioners and nurses. Those cases include *O’Ceallaigh v. An Bord Altranais* [2000] 4 IR 54, *Medical Council v. Waters* [2021] IEHC 252, *Medical Council v. Bukhari* [2022] IEHC 723, my judgment in *Medical Council v. A Medical Practitioner* [2023] IEHC 171 and *Medical Council v. A Medical Practitioner* [2023] IEHC 679 (O’Higgins J.). They may be summarised as follows:

- (i) The court has a very wide discretion and a broad jurisdiction in terms of the possible orders it may make in an application such as this.
- (ii) The court’s task on such an application is to assess whether it is in the public interest that the order sought may be made. As Geoghegan J. stated in the Supreme Court in *O’Ceallaigh*, the “*paramount consideration*” in an application such as this is whether the orders sought are necessary to prevent “*immediate danger to the public*” (at p. 133).
- (iii) On such an application, the court is not deciding the underlying complaint. It does not resolve conflicts of evidence and does not make findings of fact. That is the position in relation to all such applications but it is particularly important in relation to those allegations which are also alleged to amount to

criminal conduct which may be the subject of criminal investigation or criminal proceedings.

(iv) Before an application such as this may be brought by the relevant professional disciplinary body, such as the Council in this case, Barron J. in the Supreme Court in *O’Ceallaigh* made clear that that body must be satisfied of the following three matters:

- (a) that the complaint is a serious one in terms of the conduct complaint of;
- (b) that the case is a strong one against the relevant professional; and
- (c) that, in the event of an adverse finding in Fitness to Practise proceedings, the appropriate sanction would be to “*strike off*” the practitioner either permanently or for a defined period. As noted by Kelly P. in *Medical Council v. FCM* [2018] IEHC 616, other serious sanctions such as a conditional registration and cessation from practice until certain conditions are fulfilled would also meet the test.

In considering whether to make the orders sought on such an application, the court must also be satisfied of these three things.

(v) Even if the court is satisfied of these three matters, because of the significant adverse consequences for the registered professional of an interim suspension order being made, in terms of his or her constitutional rights to a good name and reputation and to earn a livelihood, the courts have repeatedly stressed that such an order should only be made “*when no other order was served to protect the community*” (as stated by Morris J. in *Medical Council v. Whelan* (Unreported), High Court, 20th February, 2001) and should be reserved for

“*exceptional cases*” (as stated by Kelly J. in *Casey v. Medical Council* [1999] 2 I.R. 534 at 549).

- (vi) Because suspension orders are reserved for exceptional cases and should only be made when no other order or measure would adequately protect the public or address the issues of public concern arising, consideration should be given in each case as to whether or not appropriate undertakings should be accepted in place of interim suspension order. Undertakings may be offered to the relevant professional disciplinary body or to the court. There is no obligation on the professional body (or on the court) to accept such an undertaking. An undertaking given to the court as opposed to one given to the professional body is enforceable as if it were an order of the court.
- (vii) In each case, the court must engage in a balancing exercise between the public interest (in terms of the need to protect the public) which is said to be served by the interim suspension order sought and the various constitutional rights of the relevant professional. The court must decide in each case and on the basis of the particular facts of the case where the balance should be drawn. In particular, the court must ask itself whether, on the particular facts, the public interest and the need to protect the public outweigh the constitutional rights of the professional to a good name and reputation and to earn a livelihood.
- (viii) Where the professional is the subject of a criminal investigation or criminal proceedings, a significant factor to be weighed in the balance is the presumption of innocence to which the practitioner is entitled. However, the presumption of innocence does not amount to a legal or jurisdictional bar to an interim suspension order being made where the professional is the subject of a criminal investigation or criminal proceedings. The presumption of innocence

is, however, an important factor to be weighed in the balance. Ultimately, the court must determine whether the public interest in terms of the need to protect the public trumps all of the other rights involved, including the presumption of innocence.

52. These are the principles which I will apply in determining the Council's application.

7. Brief Summary of Parties' Submissions

(A) The Council

53. The Council submitted that this is a very serious case which merits the making of the interim suspension orders sought. It submitted that [REDACTED] and the statement [REDACTED] disclose a strong case against the respondent and satisfy the three elements of the test identified by the Supreme Court in *O'Ceallaigh*. While making clear that the Council has not made any findings in relation to the allegations, it was submitted on its behalf that the allegations against the respondent are very serious, that the case is a strong one and that, in the event that the allegations against the respondent are upheld following a Fitness to Practise inquiry, the likely sanction which would be imposed is a suspension or cancellation of the respondent's registration as a dentist.

54. The Council submitted that on the three occasions referred to [REDACTED] (and in the statement), 7th November, 2023, 27th November, 2023 and 16th January, 2024, the respondent offered to supply to [REDACTED] an unlicensed botulinum toxin product ([REDACTED]) which even if licensed could not be used by a dentist other than in the practice of dentistry to a patient of his; that he offered to supply other licensed but prescription only medicines (Liporase, Lidocaine and Ozempic) without prescription to a person other than a patient of his; that he offered to supply bulk quantities of some of these medicines without the

required authorisation and that he offered to provide training in administration of Botox to the staff of [REDACTED].

55. The Council submitted that these interactions took place in the context of the respondent's dental practice. Contact was made with the respondent by WhatsApp text messages with a number on the website for the respondent's practice. The first two interactions took place at the address at which the respondent formerly carried on his dental practice and the last one took place at his current dental practice. The Council relied on the risks to the public by virtue of the alleged actions on the part of the respondent disclosed in [REDACTED] (and in the statement).

56. While noting that it was not making any findings against the respondent in deciding to bring this application, and while acknowledging that the respondent is entitled to the presumption of innocence in the context of the criminal investigation and any criminal proceedings which might ensue from that investigation, the Council noted that the respondent had not engaged at all [REDACTED]. He did not at any stage say that it was not him [REDACTED] or offer any account whatsoever as to how it appeared, at least, that it was he who was offering to supply the various products to [REDACTED]. Rather, the respondent just baldly denied the allegations against him.

57. With respect to the undertakings offered by the respondent, the Council contended that the undertakings did not adequately address the public interest concerns raised [REDACTED] [REDACTED]. It took the view that, in respect of the undertakings, the respondent was merely offering to undertake what he was already required to do by law. In respect of other undertakings offered, the Council took the view that they were unworkable in practice and in any event did not address the primary issues of concern, [REDACTED]. The Council also suggested that because of the nature of the actions portrayed [REDACTED], which appeared to disclose a lack of probity on the part of the respondent, there was a

question mark over whether the respondent could be trusted to comply with undertakings offered in circumstances where what was being alleged was a large-scale “*black market*” supply of medicines. The Council strongly stressed the public safety concerns arising from that and what it regarded as the clear and significant risk to members of the public by reason of the alleged actions on the part of the respondent [REDACTED].

58. The Council sought to distinguish cases such as *Medical Council v. A Medical Practitioner* (O’Higgins J.) and *Bukhari* where undertakings were accepted by the court in lieu of an interim suspension order, where the allegations did not concern dealings with the public or with patients and where there was no allegation of immediate danger to the public.

59. The Council disputed the allegations of delay made by the respondent in his replying affidavits and in the written submissions provided on his behalf. It relied on the dicta of Irvine P. in *Waters* that, when considering the urgency of an application for an interim suspension order, the court must look principally to the risk that the respondent’s conduct poses to patients and to the public at large. It also sought to explain the reasons why it took until the beginning of October 2024 to consider bringing this application. They included the fact that it was necessary to engage first with [REDACTED] and then with the respondent’s solicitors in order to afford the respondent an opportunity to address the allegations.

60. With respect to the respondent’s reliance on the impact of any suspension order on his patients, it was suggested that little weight should be attached to that further (when compared with the risks to the public involved) and pointed to the fact that there is one other dentist in the respondent’s dental practice and other dental practices to whom patients could be referred.

61. Similarly with respect to the respondent’s reliance on the presumption of innocence and on the personal and financial circumstances outlined in his affidavits, the Council’s position was that while those factors must be weighed in the balance, ultimately the serious concerns

surrounding public safety should tilt the balance firmly in favour of granting the orders sought. While the Council accepted that such orders should only be made in exceptional cases, it submitted that this is an exceptional case.

(B) The Respondent

62. In summary, the respondent made the following submissions. First, he submitted that interim suspension orders should only be granted in exceptional cases and that this case is not an exceptional case. He contended that there is no immediate danger to the public so as to justify the relief being sought by the Council. Second, it was submitted that the respondent enjoys the presumption of innocence which, should carry significant weight in the balance to be drawn by the court in determining this application and was allegedly incorrectly disregarded by the Council at its meeting on 4th October 2024. Third, it was submitted that having regard to the respondent's personal circumstances, his constitutional right to earn a livelihood and the undertakings which he has indicated he is willing to provide, it would be disproportionate for the court to make the orders sought by the Council.

63. The respondent accepted that the legal principles were as outlined on behalf of the Council. It was, therefore, accepted that the Council had to apply the principles in *O'Ceallaigh* in deciding whether to bring this application and that the court must also apply those principles. It was further accepted that the court has to carry out a balancing exercise in deciding whether to make the orders sought by the Council.

64. It was pointed out that the respondent accepts the seriousness of the allegations against him but that they remain allegations only based on a statement made [REDACTED]. If the matter was as clear cut as the Council suggested, the respondent queried why the HPRA has not yet charged the respondent with any offences.

65. The respondent submitted that insofar as immediate risk to the public is concerned, there is no such risk in this case. It was pointed out that the respondent has been practising as a dentist without restrictions since [REDACTED] early March 2024 (more than seven months ago). He was not contacted by the Council until three months after [REDACTED]. It was submitted that the respondent has not received any complaints from any patient in relation to his clinical practice. It was contended, therefore, that the Council has not established the requisite risk to the public to justify the interim suspension orders sought. In the event that the court were satisfied that a risk to the public does exist, it was submitted by the respondent that that risk could be fully addressed by the extensive undertakings which he has offered to the court.

66. The respondent also relied, in terms of the balance to be drawn by the court, on various other matters including the fact that if the respondent is ultimately charged with criminal offences, it could be years before any criminal proceedings were determined and, in the meantime, it would be likely that any Fitness to Practise proceedings would be stayed. If the respondent were to be suspended, he would be deprived of the opportunity of earning a livelihood for a number of years into the future. The respondent also relied on his personal circumstances, including the fact that a number of his family members are financially dependent on him. Reliance was also placed on the fact that the respondent has approximately [REDACTED] patients in his practice, which is the only dental practice in [REDACTED] and that those patients would suffer if he were suspended. Reliance was also placed by the respondent on the testimonials provided by a number of patients (which I have referred to earlier) as demonstrating the impact of a suspension on those patients.

67. The respondent rejected the Council's view that he lacked insight into the allegations and suggested that that amounted to an impermissible finding by the Council which

disregarded the presumption of innocence to which he is entitled and was made without any opportunity being given to him to address it.

68. With respect to the alleged strength of the case against him, it was submitted that although the allegations emanate from a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The respondent urged that the court ought to be cautious

[REDACTED] and should be conscious of the fact that it is not the role or function of the court to make findings of fact on an application such as this.

69. The respondent placed considerable reliance on the judgment of O’Higgins J. in *Medical Council v. A Medical Practitioner* [2023] IEHC 679 and suggested that many of the factors identified by the judge at para. 136 of his judgment in that case also applied here. It was, however, fairly accepted that there are factual differences between that case and the present case.

70. The respondent disputed the contention that he lacked insight into the seriousness of the allegations, and to demonstrate that he was fully cognisant of the seriousness of the allegations, he relied on the fact that he was legally represented at the Council meeting on 4th October 2024, and offered undertakings at that stage which he is also prepared to offer to the court.

71. While accepting that there is a relationship between the allegations against him and the practice of dentistry, it was submitted that it is significant that no patient has made any complaint against the respondent since [REDACTED]. The respondent also stressed that the allegations did not involve any patient of his practice and maintained that that should be a factor weighed in the balance.

72. Also to be weighed in the balance, the respondent submitted, was the lack of urgency demonstrated by the Council in bringing the application. While the respondent accepted the position was correctly stated by Irvine P. in *Waters*, he submitted that the lack of urgency and delay in bringing the application is an important factor to be weighed in the balance. The respondent further contended that his presumption of innocence is a significant factor to be weighed in the balance and relied in that respect on my judgment in *Medical Council v. Medical Practitioner* ([2023] IEHC 171) and that of O’Higgins J. ([2023] IEHC 679) in the identically named case.

73. Finally, the respondent contended that the undertakings which he was prepared to offer would fully address the Council’s concerns and he rejected the criticisms made by the Council of those undertakings. He observed that it was open to the Council to suggest any further undertakings over and above those already offered to address its concerns.

74. In conclusion, the respondent submitted that there is no immediate risk to the public, that while the allegations are serious, the court had to exercise particular care in assessing the strength of the case against the respondent in circumstances where the court does not find facts at this stage of the process. Very appropriately, counsel for the respondent did accept that if the allegations were to be upheld against the respondent at a Fitness to Practise inquiry, it is likely that any sanction imposed would be at the more serious end of the scale.

8. Decision on the Application

(1) Preliminary

75. I have carefully considered the submissions of the parties and have given much thought to whether I should make the orders sought by the Council. I have done so as I am acutely conscious of the impact which such orders would possibly have on the respondent, members of his family and, potentially, his patients. I am also acutely conscious that it is not my function, in determining this application, to make findings of fact. That task will fall on the

Council's Fitness to Practise committee in the event that the allegations against the respondent are referred on to be determined by such a committee or, on a judge dealing with any criminal proceedings which may be brought against the respondent arising from the allegations made against him (if dealt with in a summary manner) or by jury (if dealt with on indictment).

76. That said, I cannot ignore the fact that unlike almost every other case where a court has been asked to make an interim suspension order in the case of a professional person, there is, in this case, contemporaneous video evidence [REDACTED]. The Council had the opportunity of viewing the [REDACTED], as have I.

77. The [REDACTED] appears to show a number of things, including the following. First, it appears to show that on [REDACTED] [REDACTED] the respondent sold to [REDACTED] (a) a botulinum toxin product ([REDACTED]) which is not licensed for sale or supply in this jurisdiction, and (b) did so to a person who is not a patient of his and without a prescription. Second, at a further visit to the same premises [REDACTED] [REDACTED], the respondent appeared to sell and supply [REDACTED] two prescription only medicinal products, Lidocaine and Liporase to (a) a person who was not a patient of his and (b) without a prescription. Third, in the course of that same visit, the respondent appeared to state that he could supply larger quantities of products such as toxins [REDACTED] for better price. Fourth, on 16th January, 2024, at the premises from which the respondent now carries out his dental practice, the respondent appeared to sell and supply [REDACTED] a weight loss product, Ozempic (a) to a person who was not his patient, (b) without a prescription, and (c) in circumstances where a dentist would not appear to have reason or entitlement to supply that product to anyone, even a patient. On the same occasion, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

80. I do not agree with the submission made on behalf of the respondent that the existence of the video evidence [REDACTED] in this case is not any different to other cases where records of contemporaneous communications such as text messages and the like are relied on to support allegations against the regulated professional. Those situations are, in my view, poles apart. [REDACTED] [REDACTED], the availability of a video [REDACTED] [REDACTED], does put this case in a completely different category to those where there is a direct conflict of evidence between a complainant and a professional concerning, for example, what went on in the course of the medical examination.

81. Having made those preliminary remarks, I will now apply the legal principles identified earlier to the particular facts of this application.

(2) Immediate Risk to the Public

82. I am satisfied, on the evidence, that the allegations in this case do disclose a real and substantial immediate risk to the public. If the allegations that the respondent sold unlicensed medicinal products and licensed prescription-only products to a non-patient without a prescription and offered to supply greater quantities of medicinal products are upheld, then it will certainly have been established that there was (and is) a very serious risk to the public. There is a formal statutory regulatory procedure for the authorisation of medicinal products and there are restrictions on the sale and supply of prescription only products which are there

for good reason, namely, to protect patients and the wider public. A failure to comply with those requirements and a breach of those restrictions would have serious consequences in terms of public protection. The respondent has said (although, I note, not on affidavit) that he has not received any complaints from any of his patients arising from his clinical practice. That misses the point. The allegations against the respondent [REDACTED] do not directly concern the respondent's treatment of patients in his dental practice but rather what is alleged by the Council to amount to a "black market" supply of medicines on a large-scale basis to people who are not his patients. I have no doubt that the conduct alleged gives rise to an immediate risk to the public which is the "paramount consideration" (per Geoghegan J. in *O'Ceallaigh*).

(3) The *O'Ceallaigh* Test

83. I am also satisfied that the Council correctly identified and applied the three elements of the test in *O'Ceallaigh* in deciding to bring this application. I too must apply the test in determining the application. I am completely satisfied that each element of the test is met here.

- (a) It is not in dispute that the conduct alleged is very serious indeed. The respondent's counsel rightly made the point that they are, at this point, just allegations. Nonetheless, they are extremely serious allegations involving the alleged unlawful and inappropriate supply of medicinal products to a person who was not a patient of the respondent and who it is alleged informed the respondent that the product was required for onward supply. The respondent has quite rightly accepted that the allegations are very serious.
- (b) The case against the respondent, in my view, appears to be a strong one at this stage, [REDACTED]. I say "appears" to be a strong one since I am not making any findings of fact at this stage but

am expressing my views for the purpose of this application based on [REDACTED] and the statement and on the absence of any response or context from the respondent on the substance of the allegations. I am also satisfied that the alleged conduct does directly relate to the respondent's practice as a dentist. The evidence to date appears to disclose that [REDACTED] [REDACTED] contacted the respondent on a mobile phone number which she obtained from the website for the respondent's dental practice. On each occasion, the medicinal products which are the subject of the allegations appear to have been sold and supplied by the respondent from the same address as his dental practice (on the first two occasions, it was the former address of his practice and on the third occasion it was the current address of his practice). [REDACTED], the meetings with the [REDACTED] [REDACTED] took place at his dental practice with what appear to have been patients in the vicinity. While he was not treating [REDACTED] [REDACTED] as his patient, there are, in my view, sufficient connecting factors with the respondent's dental practice to support the Council's view that the alleged conduct may be related directly to his practice as a dentist. If not, there is, at the very least, an indirect connection with his practice. I do not accept that the case falls into the same category as *Bukhari* where the conduct in question (road traffic and drugs offences) did not directly or indirectly involve the doctor's practice and where I was persuaded at the time that there was no evidence before the court to demonstrate any threat to the health, safety and welfare of the doctor's patients. Nor is this case comparable to the case of the doctor decided by O'Higgins J. in *Medical Council v. A Medical Practitioner*. In that case, the allegations against the doctor concerned his

relationship with the complainant, allegations of rape, the making of a barring order against the doctor, alleged forced abortions, treating family members and friends as patients, producing fraudulent medical cards, tax evasion and so on. While extraordinarily serious, the allegations in that case did not concern direct involvement with the public such as by the alleged unlawful and improper supply of medicines, or, at least, to the extent of such involvement as in this case. This case is, in my view, completely different to those two cases, mainly for the reasons I have just mentioned.

- (iii) I have no doubt but that if the allegations against the respondent proceed to a Fitness to Practise inquiry, and if they are ultimately upheld, the respondent would receive a very serious sanction, probably amounting to a cancellation or suspension of his registration. This was very properly accepted by counsel on behalf of the respondent at the hearing.

84. In my view, therefore, the three elements of the test in *O'Ceallaigh* are satisfied here.

(4) The Balancing Exercise

85. However, that is not the end of the matter. Having satisfied myself that the allegations against the respondent disclose a real and substantial immediate risk to the public and that the three elements of the test in *O'Ceallaigh* have been satisfied, I must now proceed to carry out a balancing exercise between the public interest which would be served by the interim suspension order and other orders sought and the various constitutional rights and other interests of the respondent which are engaged on the facts of this case. I must decide on the particular facts where the balance should lie.

86. On the one side of the balance is, of course, the immediate risk to the public and the consequent public interest in making the orders sought by the Council. On the other are the

respondent's constitutional rights to earn a livelihood and his right to the protection of his good name.

87. Dealing first with the respondent's constitutional right to earn a livelihood and the effect of any interim suspension order on the respondent, I must consider the evidence put forward by the respondent. The respondent stated (on affidavit) that he provides financial support to his mother and two sisters (all of whom are said to be in poor health). The respondent stated that he relies on the income which he earns as a dentist to support himself and to provide financial assistance to his family. However, it must be said that very little information was provided by the respondent to his financial position. He did not, for example, exhibit any accounts from his practice to demonstrate the financial position of his practice in which there is one other dentist (who is apparently the respondent's [REDACTED]). It is not clear whether [REDACTED]. It is not said whether the respondent has a mortgage which requires to be serviced or whether his wife would be in a position to meet the cost of that. There is very little information in relation to the respondent's financial position other than what are effectively mere assertions in his affidavit.

88. I do, however, accept that if an interim suspension order is made in respect of the respondent, he will be unable to practice dentistry here for some time. The Fitness to Practise process itself would take several months, even without the complication of the criminal investigation and potential criminal proceedings being brought. If criminal proceedings are brought, then it is likely that the process will be even more prolonged since, as the respondent pointed out, the Fitness to Practise process would probably be deferred until any criminal proceedings are concluded. The respondent has stated that if indictable proceedings are brought against him, it could take up to three years for those proceedings to conclude. If summary proceedings are brought then it would be likely to take a year to a year and a half

for those proceedings to conclude. That sort of timeframe is not disputed by the Council, and I accept that it is probably correct.

89. Notwithstanding the absence of financial information in relation to the respondent's practice or in relation to the respondent himself, I do accept that a significant factor to be weighed in the balance is the fact that, if an interim suspension order is made, the respondent would be deprived of income earned as a dentist for anything up to three or three and a half years. However, this case is somewhat different to the case I decided in *Medical Council v. A Medical Practitioner* where, because of the age of the doctor involved in that case, and the likely delay in concluding the criminal proceedings at issue there, any suspension was likely to bring the doctor's career to an end, having regard to his age and the likely time period involved. There was also evidence in that case that the respondent had no source of income other than the income from his medical practice. The respondent in this case is [REDACTED] years of age, a much younger man than the doctor in that other case and the same considerations (the end of his career) do not arise here. Nonetheless, I accept that it is a significant factor to be weighed in the balance.

90. As regards the respondent's constitutional right to his good name, that is another factor to be included in the balancing exercise. Some weight must be given to the potential damage to the respondent's right to a good name. However, that weight is somewhat lessened by the fact that the respondent was [REDACTED]. In a sense, it could be said that the damage to the respondent's good name has already been sustained. Nonetheless, I accept that this is a factor to be weighed in the balance.

91. Another very important factor to be weighed in the balance, as part of the constitutional rights of the respondent which I must consider, is the presumption of innocence enjoyed by the respondent in relation to the allegations in circumstances where he has strenuously denied the allegations made against him. The presumption of innocence does not, however, amount

to a legal or jurisdictional bar to the making of an interim suspension order where the respondent is the subject of a criminal prosecution and where he or she had made clear that the allegations are being strenuously denied. The court must determine whether the public interest served by the need to protect the public trumps all of the other rights and interests of the professional concerned.

92. I also weigh in the balance the impact on the respondent's patients. The respondent opened his new practice (apparently with [REDACTED], and now has [REDACTED] patients. He has raised concerns as to what would happen to those patients if the orders sought by the Council are made. His practice is the only dental practice in the town of [REDACTED]. I attach some but little enough weight to this factor when compared with the risk to the public involved. I referred earlier to the testimonials which the respondent put before the court. With one exception, I have derived very little assistance from those testimonials. Of those provided by patients of the respondent, one is from a person with an address in [REDACTED] [REDACTED] who has been received treatment for braces from the respondent. It is hard to see how that patient could not receive that treatment elsewhere or closer to home. Another patient gives as her address, a place in [REDACTED], several kilometres away from the respondent's practice. Again, it is difficult to see how that patient could not receive treatment from a dental practice in closer proximity to her place of residence. There is one testimonial from a patient who lives in the locality of the respondent's practice, and I do have some sympathy for that patient's position. However, in the overall scheme of things and bearing in mind the risk to the public involved, I again attach very little weight to this patient's position in the overall balance. Two of the patients who provided testimonials

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]. I attach no weight to that aspect of that patient's testimonial.

93. A statement that does, however, deserve some weight is that of the practice manager of the respondent's practice. She stated that she was aware of [REDACTED] but was very supportive of the respondent and referred to the detrimental effects any suspension would have on patients of the respondent. She pointed out that no other dentist (in the practice) does work on braces and there would be no one (in the practice) to continue the treatment currently being provided by the respondent. She observed that patients would be left stranded if the orders sought were made. I do attach some weight to this statement and have factored into the balance the potential inconvenience to patients if the orders are sought. However, that inconvenience must be balanced against the risk to the public to which I have referred. I also note that, [REDACTED], the practice manager does not comment on the substance of the allegations or whether the respondent's supply of medicinal products [REDACTED] does form part of the respondent's practice.

94. The next factor to consider as part of the balancing exercise is the delay or lapse of time between [REDACTED] (March 2024) and the date on which the Council decided to bring this application (4th October 2024). As the respondent pointed out, having first afforded [REDACTED] some time to provide a statement, the Council first made contact with the respondent in relation to the allegations [REDACTED] on 5th June 2024, [REDACTED]. There was then a further significant period of time in which correspondence was exchanged between the Council and the respondent's solicitors, before the meeting of the Council at which the decision was made to bring this application took place on 4th October 2024. In the meantime, the respondent was

continuing to practise as a dentist and was building up his practice from its new location. The respondent has relied on this delay or lapse of time in order to persuade the court that there is no immediate risk to the public. However, it is not suggested in this application that the respondent was anything other than diligent and competent in relation to the patients of his practice. The allegations here are of a fundamentally different nature and it is not clear whether the respondent engaged in these alleged activities [REDACTED] during the intervening period. The respondent was, of course, under no obligation to address this in his affidavit in response to the application. I make the point merely to point out that the passage of time does not necessarily reduce the risk to the public by the alleged actions of the respondent as they appear in [REDACTED]. I agree with the approach of Irvine P. in *Waters* that when considering an application such as this, in terms of immediate risk and urgency, the court should look principally to the risk which the alleged conduct poses to patients and the public at large and that that risk must be assessed at the time the application is made. I am satisfied that the delay or lapse of time in the bringing of this application does not detract from the urgency of the application and the need to make the orders sought by the Council in order to protect the public.

95. It is well established that the orders sought by the Council in this case should only be made in exceptional circumstances and when no other order would properly address the risks to the public involved and where those risks cannot be properly addressed by undertakings. I will turn in a moment to the undertakings offered by the respondent. Before doing so, and subject to my view on the appropriateness and extent of the undertakings offered, I am satisfied that in this case, the risks to the public as disclosed by the alleged conduct of the respondent [REDACTED] are so serious as to require the balance to be drawn clearly in favour of making the interim suspension order and other orders sought by the Council.

96. In drawing the balance in favour of making the orders (subject to my view on the undertakings offered), I have carefully considered the various constitutional rights of the respondent engaged here as well as his other rights and interests, including the presumption of innocence which he enjoys in the context of the criminal investigation and any criminal prosecution which may emerge from that investigation. I have considered the effects on the respondent's income and his family in the event that the orders are made and have also considered the impact on the respondent's patients. I have also weighed in the balance the lapse of time between [REDACTED] and the making of this application. In my view, unless the position can be adequately addressed by undertakings, the balance very clearly lies in favour of making the orders sought by the Council in order to ensure the protection of the public.

(5) Undertakings

97. As I have noted, the respondent has offered a number of undertakings which are intended to address the concerns raised by the Council. I have given very careful consideration to those undertakings. In other cases where I felt that undertakings would adequately address the concerns raised by the relevant professional body, I have accepted those undertakings in lieu of making interim suspension orders: see, for example, *Bukhari* [2023] IEHC 429, *Medical Council v. A Medical Practitioner* [2023] IEHC 171 and *Medical Council v. Z.* [2023] IEHC 325. O'Higgins J. also accepted undertakings in lieu of orders in *Medical Council v. A Medical Practitioner* [2023] IEHC 679. The court must always be open to considering undertakings where they fully and adequately address the concerns raised by the professional body. The undertakings offered must address the concerns raised and must also be practical and workable.

98. I have carefully considered the undertakings offered by the respondent in this case. I am not satisfied that they fully and adequately address the Council's concerns. Nor are they practical and workable. That was the view expressed by the Council when the respondent offered the undertakings at the meeting on 4th October 2024. The undertakings have now been offered to the court in response to the Council's application. The Council has maintained its position that the undertakings do not fully address their concerns in terms of the alleged conduct of the respondent and the risks to the public and are not practicable and workable. I agree with the Council.

99. The first two undertakings offered by the respondent, namely, (i) not to supply or offer for supply any unlicensed medicinal products to any person, and (ii) to administer prescription only medicinal products solely to patients within the scope of his practice as a dentist, are all matters the respondent is clearly obliged to do in any event. The respondent was subject to those some obligations at the time of the conduct alleged in [REDACTED] [REDACTED] and notwithstanding the respondent's obligations, it is alleged that he failed to comply with them. I do not accept that they fully or adequately address the Council's concerns in terms of the risks to the public.

100. The undertaking offered at (iii) also does not go to the heart of the matter. According to that undertaking, the respondent offers to undertake to furnish a list of patients treated and any prescription-only medications administered for the purpose of treatment to the Council once a month. That undertaking does not address the alleged sale and supply by the respondent of prescription-only medications without prescription and to persons other than patients of his dental practice or the alleged sale of unlicensed medicinal products.

101. The undertaking offered at para. (iv) is to allow certain inspections of his dental practice to be carried out by the Council "*during normal working hours*" and for the purpose of ensuring that his clinic is being operated in a manner compliant with the 1985 Act and that

all persons working in the clinic are “*appropriately qualified and working within the scope of their practice*”. Again, while qualified in its terms, the Council’s position is that it is not practical and workable as the Council does not have a team of inspectors to carry out these types of inspections (unlike other professional bodies, such as the Pharmaceutical Society of Ireland). In any event, I am not satisfied that this undertaking would address the substance of the allegations against the respondent of effectively carrying out a large-scale “*black market*” supply of medicines including prescription-only medicines and unlicensed medicines, without prescription. In my view, the Council was entitled to reject this undertaking and I do not regard it as being sufficient to address the risks to the public involved here.

102. The final undertaking offered by the respondent at para. (v) is to attend any meeting convened by the Council, on reasonable notice, to review compliance with the earlier undertakings offered. This undertaking is consequential on the others and since I am not satisfied that the other undertakings adequately address the risks involved, this undertaking must meet the same fate.

103. In drawing the balance as I have, in favour of making the orders sought by the Council, I cannot see any undertaking which would adequately address the risks involved save for an undertaking by the respondent not to engage in the practice of dentistry pending the conclusion of any Fitness to Practise process operated by the Council.

(6) Future Steps

104. I am conscious that it is not possible for either the Council or the respondent to provide a more definitive, likely timeline for the conclusion of any Fitness to Practise process commenced in relation to the respondent while the criminal investigation by the HPRA is ongoing. If a decision is made to bring criminal proceedings, then, as I have indicated earlier, it is likely that any Fitness to Practise proceedings would have to await the conclusion of the

criminal proceedings. If no criminal prosecution is brought then it should be possible to determine the Fitness to Practise proceedings much more quickly.

105. What I intend to do is to make the orders sought by the Council pending further order of the court and to list the matter for mention in February 2025 so that I can be updated on whether or not criminal proceedings have been commenced and, if not, what the likely timeline for the determination of the Fitness to Practise proceedings might be. My intention is that the interim suspension orders should not be in place for any longer than is necessary and I would expect a commitment from the Council to prioritise the Fitness to Practise proceedings in this case (in the event that there are no criminal proceedings).

9. Summary of Conclusions

106. In summary, I have concluded that the Council is entitled to the orders sought against the respondent under s. 44 of the 1985 Act in order to protect the public. In reaching that conclusion, I have applied the legal principles on which both parties were agreed and have conducted the required balancing exercise dictated by the case law that deals with the legal principles relevant to this application. I have considered whether the undertakings offered by the respondent, or any undertakings short of an undertaking not to engage in the practice of dentistry, would adequately address the real and substantial immediate risk to the public disclosed in this case. I am satisfied that they would not.

107. In those circumstances, I will make the orders sought by the Council at paras. 1 – 7 of the originating motion *ex parte*. I will hear the parties on the issue of costs. I will also give liberty to apply. I will list the matter on a date to be fixed in February 2025 so that I can be updated on whether criminal proceedings have been brought and on the likely timeframe for the conclusion of any Fitness to Practise proceedings which may be brought against the respondent.

108. As this judgment is being delivered electronically, I will list the proceedings for the purposes of making the orders referred to at para. 107 above and to deal with any consequential matters at 10:30am on Wednesday, 6th November 2024. I will also hear the parties at that stage on the redactions to be made to this judgment to enable my reasons to be published in due course.