In The Supreme Court of Bermuda

APPELLATE JURISDICTION
No. 33 of 2019

BETWEEN:

ASAD QAMAR

Appellant

And

BERMUDA MEDICAL COUNCIL

Respondent

JUDGMENT

Date of Hearings: 1-2 December 2020
Date of Judgment: 2 February 2021

Appellant: Mr. Sam Stevens (Carey Olsen Bermuda Limited)
Respondent: Mrs. Shakira Dill-Francois (Deputy Solicitor General)

Appeal against Decision of Bermuda Medical Council
Refusal of Application for Registration as a Medical Practitioner
Section 7 of the Medical Practitioners Act 1950
Meaning of Appeal by Rehearing under RSC O.55/(2)-(7)

JUDGMENT of Subair Williams J

Introduction

1. The Appellant, Dr. Asad Qamar, is a medical practitioner who resides and practices as an expert interventional cardiologist in Florida, USA. Dr. Qamar is a US citizen who is originally from Pakistan. In October 2018 he applied to the Bermuda Medical Council (the "BMC") to be registered as a medical practitioner in Bermuda. By a written decision dated 24 September 2019 and signed by Dr. Fiona Ross, the Chair of the Credentials Committee of the BMC, Dr. Qamar's application was refused.

2. Dr. Qamar now seeks to set aside that decision through the appeal process to this Court pursuant to section 7 of the Medical Practitioners Act 1950 ("the 1950 Act") and the procedural provisions under Order 55 of the Rules of the Supreme Court 1981 ("RSC").

3. This appeal was heard by way of a rehearing on oral and affidavit evidence filed by both sides. The Court also received very helpful and ably-made submissions from Mr. Sam Stevens and Mrs. Shakira Dill-Francois, for which I am most grateful. At the close of the hearing I reserved judgment and informed the parties that I would deliver these written reasons.

The Background Facts and Unchallenged Evidence

4. In 2009 the Appellant formed what became at one point one of the largest private cardiovascular practices in the US, the Institute of Cardiovascular Excellence ("ICE"). There were seven ICE offices employing up to 250 employees and 12 physicians servicing approximately 24,000 patients. Those patients were most largely either retirees of the US government Medicare insurance program ("Medicare") or uninsured and/or indigent patients. By 2012, ICE had become the largest beneficiary of cardiovascular reimbursements by Medicare and featured among the 50th percentile for Medicaid reimbursements from the State of Florida.

5. Insurance coverage provided by Medicare applies to persons who are either over the age of 65 years or to persons of any age affected by a disability. Unlike, the US Federal and State Medicaid system ("Medicaid"), eligibility for Medicare is not income-based.

The Filing of Qui Tam Claims

6. In early 2011, a Dr. Robert Green was employed as a general internist at ICE. His role was akin to the role of a general practitioner. Dr. Green was placed on a three-month probationary period which was terminated without the offer of full-time employment. Months thereafter in July 2011, Dr. Green filed a *qui tam* claim (whistleblower claim) against the Appellant, the Appellant's wife and ICE under the False Claims Act ("FCA"), 31 U.S.C. §§ 3729 – 3733. Such claims entitle a whistle blower to a shared portion of any settlement or damages awarded.

7. In June 2014 another *qui tam* claim was filed against Dr. Qamar, his wife and ICE. This claim was brought by a Ms. Holly Taylor who was employed by a third party billing contractor

(“PIP”) used by ICE. Dr. Qamar’s evidence was that Dr. Green and Ms. Taylor were romantically involved and that ICE, being unhappy with PIP’s services, had terminated PIP’s contract shortly prior to the filing of this second *qui tam* claim in June 2014.

8. On 22 December 2014, the US Government subsequently intervened in both *qui tam* claims and in April 2015 the two *qui tam* claims were consolidated into one action.

Investigations into the Qui Tam Claims

9. The allegations underlying the *qui tam* claims were investigated over a four year period by the Office of the Inspector General (“OIG”), the Department of Health and Human Services and the civil division of the US Department of Justice (“DOJ”). These allegations accused Dr. Qamar and ICE of improperly billing to Medicare, Medicaid and TRICARE for medically unnecessary procedures and improperly waiving Medicare co-payments. An extensive audit was undertaken by these investigating authorities culminating in formal complaints that Dr. Qamar engaged in ‘over-utilization’ in respect of four patients treated in ICE’s service line of peripheral endovascular interventions.

10. Dr. Qamar maintained that these allegations were wholly unfounded. Notwithstanding, he also characterized these investigative conclusions as an ‘extremely low rate of incidence’ being 0.2% of the total pool of services provided by ICE. He also pointed to the reports of independent experts, Dr. Michele DeGregorio, MD and Dr. Gino J. Sedillo, both of whom were instructed without remuneration to review the cases of these same four patients. In Dr. DeGregorio’s report he concluded that in all cases hemodynamically significant and high grade lesions were noted and that “*all interventions were considered appropriate*”. Similarly, in Dr. Sedillo’s report he observed flow limiting lesions and found that “*the treatment of said lesions was appropriate and met the current standard of care for treating lower extremity peripheral arterial disease*.”

Settlement of the Qui Tam Claims (Medicare) with the DOJ and OIG

11. In his first witness statement to the Court which formed part of his evidence in chief, Dr. Qamar referred to his settlement discussions of February 2015 as follows [paras 36-38]:

“36. *In or around February 2015 I had a meeting with the OIG and DOJ in Washington DC. This was one of several meetings in 2015. I was present along with my attorneys in the qui tam litigation Greg Kehoe and Kirk Orgosky. Also present were the attorneys for the DOJ, Eva Gunaskerva and Adam Tarosky as well as the attorney for the OIG, Nancy Brown. They were clear with us that their expert did not consider that the interventions were justified, and that pitting the experts against each other at trial would be* [a] *very long and expensive process. They repeatedly stressed that it was in my interest* [to] *agree to a settlement*.

37. I was adamant that I did not want to settle as I did not consider I had done anything wrong. In the back of [my] *mind I was also worried that a settlement, no matter what its express terms, would make it look to the outside world like I had something to hide.*

38. The OIG and DOJ said that if I did not settle they would bring me to a financial position where I would have no choice but to settle. I consider that this threat is what precipitated the subsequent ban from Medicare for myself and ICE…"

12. Having at this stage declined any proposed settlement agreement, in April 2015 the Center for Medicare and Medicaid services ("CMS") confirmed a 3 year revocation of ICE's and the Appellant's Medicare privileges, effective 28 May 2015. By letter dated 28 April 2015, CMS wrote directly to Dr. Qamar stating its reasons for revoking his Medicare privileges. Amongst those reasons it was stated that a data analysis of Dr. Qamar's bills disclosed excessive time billed on a single date of service and 33 further instances of other days where he excessively billed for 20 hours or more of daily face-to-face contact with patients. The letter also states:

    "*In addition, data analysis conducted on claims billed by Dr. Qamar, for dates of service between January 1, 2011 and November 24, 2014, revealed that Dr. Qamar billed for services to beneficiaries who were deceased on the purported date of service. See Attachment C…*"

13. The 3 year Federal Medicare ban triggered a 20 year Florida State ban against Dr. Qamar and ICE from Medicaid. Feeling aggrieved by the 3 year exclusion and maintaining the wrongness of the stated grounds relied on, Dr. Qamar instructed a US attorney, Mr. Tracy Mabry, to appeal against the bans imposed by CMS.

14. Dr. Qamar in his evidence to this Court narrated the consequential financial hardship he encountered leading up to the Chapter 11 bankruptcy proceedings filed by him and his wife and ICE. This was followed by the Appellant's decision to settle the *qui tam* claims with the OIG and DOJ and the related appeal against the ban from Medicare. Dr. Qamar stated in his first witness statement [55]: "*the decision to settle was made for purely practical and commercial reasons and not because I accepted that I was in the wrong*."

15. The settlement agreement in respect of Medicare was entered on 30 June 2016 ("the Medicare Settlement"). Embedded in the Recitals of the Medicare Settlement is the following caveat [G]:

    "*This Agreement is neither an admission of liability by Defendants nor a concession by the Governments that their claims are not well founded.*"

16. Under the terms and conditions of the Medicare Settlement [para 6] the Appellant agreed to a 3-year exclusion in the following terms:

    "*In compromise and settlement of the rights of OIG-HHS to exclude Defendants pursuant to 42 U.S.C. § 1320a-7(b)(7), based upon the Covered Conduct, Defendants agree to be excluded under this statutory provision from Medicare, Medicaid, and all other Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f), for a period of three years. The exclusion shall be effective on February 1, 2017.*"

17. The Appellant, through his attorneys, filed a Motion, dated 8 July 2016, for the US Bankruptcy Court in the Middle District of Florida to approve to the Medicare Settlement. By an Order of that Court, dated 19 January 2017, the said Motion was granted.

Settlement of the Qui Tam Claims (Medicaid) with the DOJ and OIG

18. The 20 year Medicaid ban remained and was not displaced by the Medicare Settlement. It was not until July 2017 that a settlement agreement was formed in respect of Medicaid ("the Medicaid Settlement").

19. The Medicaid Settlement, which also settled the appeal proceedings, contained the following terms of note [paras 2, 5 and 9]:

"*2. In order to resolve this administrative matter without the necessity for an administrative hearing or further litigation, the Parties agree that Respondent will be terminated from participation in the Medicaid program for a period of three (3) years beginning February 1, 2017…*

5. This Settlement Agreement does not constitute an admission of wrongdoing or error by either Party with respect to this case or any other matter.
…

9. This is an agreement of settlement and compromise, made in recognition that the Parties may have different or incorrect understandings, information, and contentions as to facts and law, and with each party compromising and settling any potential correctness or incorrectness of its understandings, information and contentions as to facts and law, so that no misunderstanding or misinformation shall be a ground for rescission hereof."

The Florida State Department of Health Investigation and Disciplinary Proceedings

20. Notwithstanding the Medicaid and Medicare Settlements, the Florida State Department of Health ("the FDOH") had initiated and proceeded with a further investigation into the allegations settled as a pre-cursor to possible professional disciplinary action. During this investigation process which started in October 2017, the FDOH filed a formal administrative complaint against the Appellant dated 24 October 2017 ("the FDOH Complaint"). The FDOH Complaint was consequential to Dr. Qamar's ban from his Medicare and Medicaid privileges.

21. In the concluding paragraphs of the FDOH Complaint it reads [9]:

"*Based on the foregoing, Respondent has violated section 456.072(1)(kk), Florida Statutes (2104), by being terminated from the Florida Medicaid program and the Federal Medicare program and not having his eligibility to participate in either restored.*

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate."

22. The result of FDOH investigation was reported in a 22 August 2018 letter by the Assistant General Counsel of FDOH to the Appellant's attorney. In the opening paragraph of the letter it states:

   "*Please be advised that on August 17, 2018, the Probable Cause Panel for the Board of Medicine considered the complaint that has been filed against your client…After careful review of all information and evidence obtained in this case, the Panel determined that probable cause of a violation does not exist and directed this case to be closed*."

23. On 10 September 2018 terms of settlement of the FDOH's administrative complaint were agreed between the parties ("the FDOH Settlement"). The material terms were:

   "*STIPULATED FACTS*

   …

   3. For the purposes of these proceedings, Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint.

   STIPULATED CONCLUSIONS OF LAW

   …

   3. Respondent agrees that the Stipulation Disposition in this case is fair, appropriate and acceptable to Respondent.

   STIPULATED DISPOSITION

   1. ***<u>Letter of Concern</u>*** *– The Board shall issue a Letter of Concern against Respondent's license.*

   2. ***<u>Fine</u>*** *– The Board shall impose an administrative fine of Five Thousand Dollars and Zero Cents ($5,000.00) against Respondent's license which Respondent shall pay to…*

   3. *[Costs] …*

   4. ***<u>Laws and Rules Course</u>*** *– Respondent shall document completion of a Board-approved laws and rules course within one (1) year from the date the Final Order is filed.*

   5. ***<u>Continuing Medical Education – "Risk Management"</u>***
      …"

24. It was not until 28 February 2019 that the Final Order of the Board of Medicine ("The Final Order") was filed with the Clerk of the Department of Health. This was thus the date on which the Final Order took effect. (The effective date of the FDOH Settlement was contingent on the effective date of the Final Order.)

The Financial Impact on the Appellant

25. The Appellant described the grave financial effects and life-changing results which resulted from the battle of the *qui tam* claims and the Medicare and Medicaid exclusions. He explained that this left ICE in real cash-flow difficulty. Offering a vivid depiction of his financial distress he said in his first witness statement [para 50 -52]:

"*50. I started ICE from scratch and with the help of others transformed it into a large and successful business. I was desperate to keep the business solvent and operational during this period of intense financial pressure. As a result my wife and I decided to take all of our personal savings and put these into the business. This included the drastic step of liquidating my children's college fund, as well as our private pensions.*

51. In hindsight, this was probably not the right thing to do, but to me ICE was more than just a business or my practice; it was my family.

52. My wife and I exhausted all of our personal resources to keep the business going. But despite our financial predicament I continued to treat my Medicare and Medicaid patients without being paid…"

26. In November 2017 the Florida Bankruptcy Court approved a financial reorganization plan submitted on behalf of the Appellant and his wife. The following month in December 2017, the Appellant sold ICE to the University of Florida. Thereafter, he continued to practice medicine at the Central Florida Heart Group. In his first witness statement, Dr. Qamar said [paras 61-62]:

"*61. Throughout this entire period I continued to practice medicine in Florida (and did so until 31 January 2019 when I chose not to renew my licence in Florida as I planned to move to Bermuda…). I continued to treat many of my Medicare/Medicaid and uninsured patients without any compensation. As I was on the excluded list, some private insurance companies would also not pay me. I was therefore working on a predominantly voluntary basis from 2015 until early 2019.*

62. We survived financially day-to-day because my wife has a successful paediatrics practice from which she was still able to draw an income. We also sold some land in Orlando in 2016 and a house in Orlando in 2017. My wife also sold the freehold of her practice building and became a tenant to release some capital. In 2018 we sold a further apartment we owned in Dubai."

The Appellant's Plans to Practice Medicine in Bermuda

27. The Appellant was approached by a Mr. Donald Geer about the possibility of operating a cardio-cath lab in Bermuda which would be built in to the services provided by the Bermuda Medical Specialty Group ("BMSG"). Mr. Geer is the chief executive officer of a company registered in Nevada under the name NMCV Partners JV Ltd. ("NMCV").

28. Mr. Geer, whose academic background is highlighted by a Bachelors of Science in engineering, a Master of Business Administration and a doctoral candidate in Education, has an excess of 30 years of employment in the healthcare industry. However, he is not a medically qualified person.

29. NMCV specializes in establishing new cardio-cath labs in rural and small-population communities. The focal feature of these labs is intended to be their competence and capacity to offer minimally invasive procedures by entry into the blood vessels and arteries as opposed to open heart surgical procedures. Mr. Geer, as CEO of NMCV, is actively involved in the overseeing of cardio-cath labs and the employment selection of its medical practitioners.

30. In March 2018 Mr. Geer presented a Dr. Basden and Mr. Marico Thomas of BMSG with the idea of opening a cardio-cath lab at their existing facility in Bermuda. Having received their express approval and enthusiasm for such a venture, Mr. Greer then reached out to the Appellant to propose his involvement. In Mr. Geer's evidence before this Court he said [paras 14-21]:

"Approaching Dr Qamar

14. I first met Dr. Qamar in or around 2015. A doctor I knew in Las Vegas was looking to hire him and told me about him. It happened that Dr. Qamar lived about an hour and half from me in Florida.

15. I went to meet him and explained what I did. I was interested in having him as a doctor at our various labs. I therefore began a heavy vetting process of Dr. Qamar, where I would watch him during his clinics and surgeries. This was essentially an extended job interview.

16. Dr. Qamar was honest and open with me about the difficulties he was facing and I completed my own investigations at that time. For my part I was fully satisfied that Dr. Qamar had met my vigorous vetting standards for a number of reasons…

17. I was very impressed with Dr. Qamar from the outset. In my opinion he has a very rare combination of skills and assets…

18. …I was therefore very keen to have him work in our labs. I told Dr. Qamar that [I] would let him know if the right opportunity came up.

19. For me, having Dr. Qamar run a lab in Bermuda is that opportunity.

20. Accordingly in or around May 2018 I approached Dr. Qamar about coming to Bermuda and heading up the lab being set up in conjunction with BMSG. He came over in or around July 2018 and stayed at my house. He met Dr. Basden and Marico from BMSG. We were all excited about the project.

21. He was very open with them about his past issues and it was not felt that there was no cause for concern. Dr. Qamar never lost his medical licence and he was always entitled to

treat private patients. My view was confirmed when the Florida Department of Health stated in August 2018 that having reviewed all the available evidence from the OIG and DOJ there was no probable cause in the allegations to merit taking disciplinary action against Dr. Qamar. This was a hugely significant finding because it was in effect a complete vindication of Dr. Qamar's position in relation to the allegations against him."

The Appellant's Application for Registration in Bermuda as a Medical Practitioner

31. On 19 October 2018 and 28 November 2018 Dr. Qamar applied to the BMC to register in Bermuda as a medical practitioner. The same application form was used on both dates. (The 28 November application form was submitted for the purpose of correcting the statement of application fees on the earlier application form. Save for one uncontroversial difference, the responses on the two application forms were identical. Hereinafter, I shall collectively refer to these two forms as "the Application Form".)

32. The Application Form consisted of the following opening narrative:

"*Please print all information. Complete every section of this application and submit the original application and all required supporting documents. If more space is needed to fully answer questions attach additional sheets with typed responses*."

33. Section 7 of the Form is entitled "Screening Questions" and expressly requires an answer to all of the questions listed. Directly underneath that sub-title is the following instruction:

"*Answer the following questions by placing a tick … in the appropriate box. If you answer "yes" to questions 2-6 provide complete details on a separate sheet of paper and attach to this form…*"

34. The responses given by the Appellant to questions 3 and 4 are the subject of dispute in this litigation. Questions 3 and 4:

"…
3. Has any disciplinary action been taken against you by any medical authority?

4. Have you had privileges denied, revoked or restricted in a hospital or other health care facility?
…"

35. Each question under section 7 is followed by a "yes" or "no" option where a tick symbol is requested to be placed to signify the selection. The Appellant placed a tick in the "no" box in answer to both questions 3 and 4 and personally signed the Application Form.

36. In addition to the filing of the Application Form, the Appellant submitted his Curriculum Vitae ("CV"), professional certificates, his immigration consultation form, etc. and other standard supporting documentation.

37. The Appellant's explanation for his response to Question 3 is stated in his witness statement [paras 85-88]:

"*85. One of the questions on the form was "3. Has any disciplinary action been taken against you by any medical authority?" I ticked "no" in answer to that question…The reason I did so was because, at that time (October 2018), no disciplinary action had been taken against me by any medical authority. The letter of concern…was not added to my file until February 28 2019…My answer was therefore a truthful one."*

86. After applying to the Respondent I was very quickly issued with a number. Not being at all familiar with the registration system I believed this was my medical registration number and that the process was complete. I therefore did not tell the Respondent about the letter of concern entered in February 2019 as I thought I was already registered. Indeed on 23 April 2019 my lawyers in Bermuda wrote to the Respondent seeking my certificate of registration because I had (it turns out incorrectly) explained that I had already been registered as a medical practitioner…It was after this that I found out that the number I had been given was in fact a temporary registration number that is issued when an application is received, and is not in fact my medical practitioner's number.

87. After my application to the Respondent I had a few phone calls where they asked me about the status of my medical licence with the FDOH and Florida Board of Medicine. I also informed the FDOH that the Respondent would likely be in touch with them regarding my application.

88. After February 2019 I did not tell the Respondent about the letter of concern because, to be frank, it did not occur to me to do so. I want to make absolutely clear however that I was not trying to hide anything from the Respondent. Indeed the website listing the status of Florida medical licences and any administrative complaints is available to the public to access, and so even if I had wanted to hide the information it was not within my power to do so"

38. Addressing his response to Question 4 Dr. Qamar said [paras 89-91]:

"*89. Question 4 of the application form asked "4. Have you had any privileges denied, revoked or restriction in a hospital or other healthcare facility?" Again I ticked "no" in response to that question. The reason I ticked "no" was because I understood this question to be asking specifically about hospital or other healthcare facility privileges. For me that means whether a hospital or other healthcare facility has ever taken away your ability to treat or admit patients at their facility. As that has never happened to me I answered no. I did not understand the scope of this question to encompass billing privileges specific to the American Medicare/Medicaid system.*

90. At no point was I trying to conceal or hide information. BMSG were aware of the events I have described above and, like I said, I filled out the application form in consultation with BMSG's Chief Medical Officer. I deeply regret that my truthful answers to these questions have been interpreted and characterized as half-truths that were designed to mislead the Respondent. That was never my intention. I am an honest man.

91. At the time of my application to the Respondent my medical licence was clear and active, with no restrictions against it. I was fully licensed to practice until 31 January 2019 when my licence was due to expire. I note that the Respondent accepts this at paragraph 68 of the Decision."

The Decision of the Credentials Committee of the BMC

39. The Appellant complained that the Credentials Committee erred in their analysis of "good character" in their written decision of 24 September 2019 ("the Decision"). The Respondent, however, maintains that the Decision was correct and ought to be upheld.

40. The Decision, a 23-page typed document, outlines the factual background to the *qui tam* claims and the subsequent settlement agreements including the FDOH Settlement. The Decision contains an analysis of the meaning of "good character" and includes references to English case law (*Akinleye v General Medical Counsel* [2004] EWCA Civ 120) and a published Guidance Note to the British Nationality Act 1981).

41. The following portions of the Decision are impugned by the Appellant [76-82]:

"*76. The Committee does not agree that Dr. Q has been "completely open and transparent" with respect to his application as he maintains. The Committee has accepted as a matter of fact Dr. Q was not actually disciplined until February 28th, 2019. (Footnote 29: due to routine administrative delay on the part of the DOH in processing the matter according to Mr. Christopher Dierlam of the DOH.) As stated by his attorney Tracy Mabry in a letter dated June 6th, 2019 (Qamar Binder 1, Tab 12), "The official date of the disciplinary action against you was February 28th, 2019, when the FDOH Final Order was entered."*

77. Thus, Dr. Q's answer to Question 3 on the Application Form was technically true at the time he signed the Form in October/November 2018. However, at that time, Dr. Q knew that disciplinary action against him was imminent and pending, because he had just signed the Settlement Agreement (No.2) on September 10th, 2018, agreeing to such disciplinary action being imposed.

78. The Committee is of the view that a doctor of good character acting with integrity and honesty and seeking registration for the first time in another country, and having read the Application Form which emphasizes honest and fulsome answers, would have been forthright and transparent when answering Questions 3 and 4; in particular that he would have been open and transparent about disclosing and seeking to explain away the lawsuits against him that led to his 2015 bans from the federal Medicare and Medicaid programs (and subsequent "voluntary" exclusion from such programs for 3 years (2017-2020), which led to the Administrative Complaint by the DOH filed in 2017, which in turn led to the disciplinary penalties imposed against his licence, and which led to his case of insolvency, both personally and professionally.

79. Further the BMC considers that a doctor of good character in the circumstances as set out above acting with integrity and honesty would have felt duty-bound to update his past answer

3 with the truth as at February 28th, 2019, when the answer to question 3 changed whilst his application was still pending, as he had then become subject to disciplinary action. The answer to this question became false on February 28th, 2019, some 10 days after Dr. Peek-Ball chased information from his prospective employer by email about the outcome of the case; yet he did not voluntarily disclose this information and relevant documentation through his attorneys until June 7th, 2019, which was after the Committee had already discovered on its own volition the main events that led to the disciplinary penalties imposed, some of which were ordered to remain in place for 3 years, through February 1st, 2020.

80. Further, whilst the Committee has noted that the 2011 and 2014 federal lawsuits (joined in by the Government) were settled in a Settlement Agreement without an admission of liability (as is common, the Committee is advised, in almost all Settlement Agreements), the Committee notes the millions of dollars that Dr. Q paid (and forewent)- some $7.3million- in order to have the allegations settled- in addition to the 3 year restrictions on his "privileges" (in the loose sense of the word) in terms of being able to serve Medicare and Medicaid patients. He also agreed to a further 3-year period of oversight thereafter (2020 through 2023). The Committee has noted that the letter from Dr. Q's attorney Tracy Mabry to the BMC dated June 6th, 2019, states that Dr. Q may reapply to participate in federal healthcare programs effective February 1st, 2020 (Qamar Binder 1, Tab 12) i.e., in just over 4 months' time.

81. The Committee has further noted that Dr. Q remains an undischarged bankrupt, after he and his wife and both businesses went into bankruptcy. Creditors are continuing to be paid. His financial standing is therefore naturally concerning.

82. In all circumstances and for all of the above reasons, the Committee, after deliberation, and applying the balance of probabilities civil standard of proof to its discretionary decision, has not found Dr. Q to be a "duly eligible applicant" as he has not satisfied the subsection 7(7)(b) requirement of being of "good character." Notwithstanding the positive factors that the Committee has taken into account about Dr. Q, there remains troubling doubt and apprehension on the part of the Committee surrounding the integrity and character of this seemingly notorious person which has cast doubt on his character that the Committee cannot comfortably dispel.

83. Accordingly, his request for registration as a medical practitioner in Bermuda is denied."

<u>The Grounds of Appeal</u>

42. By a Notice of Originating Motion filed on 16 October 2019 the Appellant pleaded the following grounds of appeal [8-9]:

"*In its Reasons the Credentials Committee stated that the Appellant's application had been rejected because it had concluded that the Appellant was not a "duly eligible applicant" as defined under Section 7 of the Act. Specifically, the Credentials Committee stated that it had formed the view that the Appellant had not satisfied the statutory requirement of being "of*

good character", which is one of four criteria that any applicant must meet under Section 7(7)(a)-(d) of the Act to be deemed a "duly eligible applicant".

It is submitted that the Credentials Committee's conclusion that the Appellant has not satisfied the statutory requirement of being "of good character" is wrong and/or objectively unreasonable. This is because none of the facts and circumstances relied on by the Credentials Committee in its Reasons as to why it formed that view constitute cogent evidence that the Appellant is in fact not of good character, alternatively it was objectively unreasonable of the Credentials Committee to rely on the facts and circumstances cited in its Reasons."

The Disputed Issues

43. Counsel for both side agreed that the only substantive issue in this case is good character. No contention arose as to the adequacy of Dr. Qamar's academic qualifications or professional or experience. In fact, it was undeniable on the evidence that Dr. Qamar has a wealth of skill and expertise in his field of practice. On behalf of the Appellant, Mr. Stevens submitted that if the Court comes to resolve the issue of good character in the Appellant's favour, I should then direct the BMC to register Dr. Qamar as a medical practitioner because his eligibility is not otherwise challenged.

44. In asserting his good character, the Appellant relied on his own affidavit and oral evidence in addition to the affidavit evidence of Mr. Geer who deposed [33-34]:

    "*33. I understand that the BMC has rejected Dr. Qamar's application because it is not satisfied he is of good character. Knowing Dr. Qamar like I do, I was truly astonished by this conclusion.*

    34. In all my dealings with him Dr. Qamar has been unrelentingly honest and transparent with me concerning the battles he has had to fight to clear his name. Naturally before deciding to offer him the opportunity to work together I performed my own intensive due diligence on what had occurred, and nothing he has said to me has ever been inconsistent with what I found."

45. On the issue of good character, the Appellant's case was that the Respondent was wrong to indict Dr. Qamar's character on facts unproven. Mr. Stevens carefully took the Court through the background evidence in support of his topmost argument that Dr. Qamar has a clean record for the purpose of assessing his good character. Mr. Stevens said that the extensive and independent investigation carried out by the FDOH showed the allegations to be entirely baseless. This, Mr. Stevens pointed out, is the regulatory authority which has jurisdiction over the Appellant as a medical practitioner in Florida. (Here, Mr. Stevens was referring to the 22 August 2018 finding of no probable cause by the Florida State Probable Cause Panel.)

46. Mr. Stevens pointed to the witness statement of Dr. Ross and criticized the Committee for being wrongly distracted by extraneous factors in assessing the issue of "good character". Particularly, he pointed to the following passage from Dr. Ross [para 100] as an example of the Committee's unfair regard to a court of public opinion:

"*The long and extensive history concerning the Appellant as described above is nothing like what I have seen before in any Applicant applying for registration. The Committee is concerned that the Appellant's conduct is indicative of the general manner in which he might likely conduct himself should he be registered to practice in Bermuda which has the real potential to tarnish the public's trust in him, and therefore the medical profession. The Committee further notes that the Bermuda public could conduct their own google and on-line searches about the Appellant if he moved to Bermuda and discover a wealth of information about him and his past conduct in the United States, thereby calling into question their own trust in him as well as the integrity of the BMC whose job it is to sift out applications that should have been refused*."

47. Mr. Stevens submitted that the Court, in its final analysis, is left with the fact that Dr. Qamar has never been convicted of a criminal offence nor has he been found to have committed any civil wrong. He added that Dr. Qamar's medical licence has never been suspended or revoked. Mr. Stevens contended that on the totality of these facts, Dr. Qamar is to be adjudged as a person of good character.

48. Mr. Stevens argued that the Respondent was unable to produce any relevant case law where a person was found not to be of good character by reason of unproven allegations. He submitted that in each of the Respondent's authorities the rejected applicant had either been convicted of a criminal offence or had been found guilty of very serious professional misconduct on proven or admitted facts.

49. Addressing Dr. Qamar's impugned responses on the application form, Mr. Stevens submitted that the evidence showed that Dr. Qamar was honest, truthful and fulsome throughout the application process.

50. On the Respondent's case, it was accepted that the Appellant had produced evidence supportive of good character. In the Decision handed down, the Respondent made the following acknowledgments [18-20]:

"*18. The Committee has also read and taken into account supporting positive reference letters that Dr. Q has supplied that attest to his good character and professional skills, albeit some were either undated or unsigned or both, and/or contained duplicative, identical language to others.*

19. In addition, the Committee has noted Dr. Q's Community Service activities listed on his C.V. whereby he states that he is confident that he has seen a larger number of indigent patients than any other private practitioner in his area free of charge. His charitable fundraising activities have also been noted.

20. The Committee has taken all of these matters and all documents submitted by Dr. Q into account."

51. However, it is the Respondent's principal case that the evidence showing a real lacking of good character is sourced by Dr. Qamar's omission to give full and complete details in his Application Form responses to the BMC.

The Relevant Law

The Statutory Framework for Applications to Register as a Medical Practitioner

52. Section 7 of the 1950 Act outlines the application process for registration as a medical practitioner in Bermuda. In the first instance, an applicant is required to submit the prescribed application form to the Permanent Secretary responsible for health. The Permanent Secretary is then statutorily obligated to forward the application and any accompanying documents to the BMC.

53. The accompanying documents are described at section 7(a) as follows:

    "*such documents relating to malpractice insurance, professional qualifications, experience and character in support of the application (including, where he claims the right to be registered as a specialist, such documents as in his view justify his claim) as may from time to time be prescribed…*"

54. Subsection (3) provides that a Credentials Committee on behalf of the BMC shall be appointed for the purpose of considering the application and "*whether the applicant is a duly eligible applicant*". Under subsection (4) the Credentials Committee shall consist of four persons considered by the BMC to possess qualifications appropriate for dealing with the application.

55. Reasons for any decision that an applicant is not duly eligible must be reported by the Credentials Committee to the BMC who must thereafter transmit the decision and reasons to the Permanent Secretary.

56. Subsection (7) gives a four-part meaning to the term *"duly eligible applicant":*

    (a) has satisfactorily completed such course of study and examination as the committee consider sufficient to be, prima facie, evidence of his competence efficiently to practice medicine and surgery or, in the case of an applicant for registration as a specialist, the specialty reference to which he has applied for registration as a specialist;

    (b) is of good character;

    (c) has not been examined under this Act within the period of the last preceding six months; and

    (d) has supplied the Council with a certificate from the Minister responsible for Immigration that he has or will have, subject to meeting the requirements of this Act, the right to work in the practice of medicine or surgery in Bermuda

Provided that the Council may dispense with the need for such a certificate in any case where they are satisfied that the applicant for registration has that right."

57. Once an applicant has been determined by the Credentials Committee to be duly eligible (or the Supreme Court has so determined on appeal), section 8(1) requires the BMC to conduct a "qualifying examination" of the applicant. Section 8(2) sets out the meaning and conditions of the manner of conduct of the qualifying examination. Section 8(5) states that no appeal shall lie to the Supreme Court under the 1950 Act against a determination made on the qualifying examination in accordance with the section 8. Section 9 outlines the requirements for the transmission of a notice of the examination result.

A Legal Analysis of 'Good Character'

58. The concept of 'good character' is not statutorily defined. However, by a majority decision, the Privy Council in *Layne v Attorney General of Grenada* [2019] UKPC 11 settled the meaning of good character under section 17(1) of the Legal Profession Act 2011 which lists "good character" as one of the conditions on which the Supreme Court must be satisfied before a person can be admitted to the Bar in Grenada. In the leading judgment of Lady Arden (with whom Lord Wilson agreed) she stated [36-37]:

"*36. For understandable reasons, a wide range of professions, and not just the legal profession, have good character and competence conditions for entry into the profession. Those professions include those in which members of the public may place great trust, such as the medical and legal professions. Members of these professions, once admitted, have to observe high standards of behaviour in both their private and professional lives. They may face disciplinary charges if they fail to do so.*

37. The content of a good character condition may vary according to the profession. The person or body which has to be satisfied about conditions of entry may be given powers to investigate or obtain evidence. Or limits may be placed on the type of conduct to be examined and so on…

…"

59. Having found that the determination of 'good character' is a judicial assessment rather than an exercise of discretion, Lady Arden dissected the assessment exercise as follows [40-45]:

"*40. The Board considers that the good character condition has two facets: the candidate's attributes and the risk of damage to public confidence in the profession.*

(A) The candidate's attributes

41. The actions of the candidate at any stage in his career may be relevant to this facet of good character. Evidence as to convictions is necessarily relevant. In Mr. Layne's case, the convictions and the circumstances of his offending were particularly serious. The Supreme

Court went on, correctly in the Board's view, to consider evidence about his conduct following conviction. As the judge explained, that evidence is impressive.

(B) Risk of damage to public confidence in the profession

42. In the opinion of the Board, the Supreme Court is also required by the good character condition to consider the question whether the public can reasonably be expected to have confidence in the admission of the candidate ("the public confidence requirement"). This follows from the leading case of Bolton v The Law Society, which concerned an application for the readmission of a solicitor, Sir Thomas Bingham MR emphasised the need to maintain among members of the public "a well-founded confidence that [their] solicitor…[was] a person of unquestionable integrity, probity and trust worthiness" (p 519). In Jideofo v Law Society (No 06 of 2006, No. 01 of 2007, No 11 of 2007), Sir Anthony Clarke MR applied the same principles to a case in which the appellant had applied to be admitted for the first time. The Inner House of the Court of Session (Lord Justice Clerk (Gill), Lord Maclean and Lord Caplan) has also recognised the importance of the public interest in this context, together in that case with the need to protect the public (McMahon v Council of the Law Society of Scotland (2002) SC 475, para 19). (Protection of the public is not a matter requiring consideration in this case).

43. Whether there is an appropriate level of public confidence is also a matter for the assessment of the Supreme Court. As Sir Thomas Bingham said (see para 42 above) confidence must be well-founded. Thus, any lack of confidence by the public must be justifiable on an objective basis. It is not enough that the public would misguidedly not have confidence in a particular candidate. It is not part of its function to assuage public opinion. So, the public confidence requirement is not inevitably satisfied by adducing evidence of the opinion of witnesses, even witnesses having the highest standing in the community. Therefore, the Board does not accept that the Court of Appeal was bound to admit further evidence on appeal from distinguished witnesses attesting to their high regard for Mr. Layne. This was not determinative of whether the public confidence requirement was met.

44. The existence and scope of the public confidence requirement may vary according to the profession under consideration. In the case of admission to the Bar, it is relevant because, as the judge put it, attorneys are the guardians of fundamental freedoms. Attorneys play an important role in the modern democratic state in upholding the rule of law. All persons are equal under the law, and, so long as the rule of law is observed, every person will have his rights protected by the law, including his important rights to security of the person, and the established order cannot be overthrown by force. The rule of law and the constitution are mutually reinforcing. In any society, the rule of law represents a fundamental value. And there must be no gap between the theory and the reality of the rule of law. This is achieved in no small part by the work of an independent Bar, who will fight fearlessly before the courts for the rights of even the most unpopular persons.

45. It follows that the work of an attorney is not a purely private matter between him and his client, because an attorney must help maintain the law and owes duties to the court before

which he may following admission appear. Nor is the attorney's admission to the Bar a purely domestic matter between the responsible Bar Association and the applicant."

60. In Akinleye v General Medical Counsel [2004] EWCA Civ 120 the English Court of Appeal considered that an assessment of good character is a matter for the professional body concerned. In that case, the Court was moved to review the assessment of the General Medical Council [para 18]:

    "18. …*It is a matter for the judgment of the professional body – Parliament has sanctioned its disciplinary power to refuse to register somebody who is not of good character- to form its own judgment as to what good character means*…"

The Statutory Framework for the Hearing of Appeals from the BMC

61. Section 7(6) of the 1950 Act provides; "*Any person aggrieved by any decision of the Council under this section may appeal to the Supreme Court against the decision in the manner provided in section 25*."

62. Section 25 of the 1950 Act enables a person aggrieved by a decision of the BMC to appeal directly to the Supreme Court:

    "*Appeals*

    25 (1) A person aggrieved by a decision of the Council under this Act may, within 28 days after the date on which the decision is given to the person by the Council, appeal to the Supreme Court against the decision.

    (2) On an appeal under this section, the Supreme Court may make such order in the matter as it thinks proper, including an order as to the costs of the appeal.

    (3) An order of the Supreme Court under subsection (2) is final.
    (4) The practice and procedure to be followed in relation to an appeal under this section are as prescribed by rules of court.

    (5) The Council may appear as respondent on such appeal and, whether they appear at the hearing of the appeal or not, they shall be deemed to be a party to the appeal for the purpose of enabling directions to be given as to the costs or expenses of the appeal."

63. RSC O.55 applies to section 25(4). Under Rule 1 it is stated the Order 55 shall apply to every appeal where an appeal lies to the Supreme Court from any court, tribunal or person pursuant to an enactment. The only exceptions to this rule apply to appeals by case stated and an appeal governed by either the Civil Appeals Act 1971 of the Criminal Appeal Act 1952.

64. Under the O.55 procedural rules, an appeal is commenced by an Originating Motion as opposed to a Notice of Appeal and the appeal takes the form of a rehearing pursuant to Rule 3(1).

65. Under RSC O.55/7 the Court has very broad powers in the manner of conduct of an appeal. The Court may receive further oral and/or written factual evidence and the Court is entitled to draw any inference of fact from that evidence which could have properly been drawn by the tribunal of first instance.

55/7 Powers of Court hearing appeal

7 (1) In addition to the power conferred by rule 6(3), the Court when hearing an appeal to which this Order applies shall have the powers conferred by the following provisions of this rule.

(2) The Court shall have power to receive further evidence on questions of fact, and the evidence may be given in such manner as the Court may direct either by oral examination in court, by affidavit, by deposition taken before an examiner or in some other manner.

(3) The Court shall have power to draw any inferences of fact which might have been drawn in the proceedings out of which the appeal arose.

(4) It shall be the duty of the appellant to apply to the magistrate or other person presiding at the proceedings in which the decision appealed against was given for a signed copy of any note made by him of the proceedings and to furnish that copy for the use of the Court; and in default of production of such note, or, if such note is incomplete, in addition to such note, the Court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the Court to be sufficient.

Except where the Court otherwise directs, an affidavit or note by a person present at the proceedings shall not be used in evidence under this paragraph unless it was previously submitted to the person presiding at the proceedings for his comments.

(5) The Court may give any judgment or decision or make any order which ought to have been given or made by the court, tribunal or person and make such further or other order as the case may require or may remit the matter with the opinion of the Court for rehearing and determination by it or him.

(6) The Court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.

(7) The Court shall not be bound to allow the appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court substantial wrong or miscarriage has been thereby occasioned."

Meaning of 'Appeal by Rehearing':

66. Mrs. Dill-Francois directed me to the Privy Council's decision in Ghosh v The General Medical Council [2001] UKPC 29 where the Judicial Board was concerned with an appeal from the decision of the General Medical Council to erase Dr. Ghosh's name from the Register. The appeal was heard pursuant to section 40(4) of the UK Medical Act 1983 which, at the time, provided for appealable decisions to proceed directly to Her Majesty in Council[1]. In the *Ghosh* case, to which this Court is bound, Lord Millet outlined the role of the Board on appeal from the General Medical Council as follows [33-34]:

"*33. Practitioners have a statutory right of appeal to the Board under section 40 of the Medical Act 1983, which does not limit or qualify the right of the appeal or the jurisdiction of the Board in any respect. The Board's jurisdiction is appellate, not supervisory. The appeal is by way of a rehearing in which the Board is fully entitled to substitute its own decision for that of the Committee. The fact that the appeal is on paper and witnesses are not recalled makes it incumbent upon the appellant to demonstrate that some error has occurred in the proceedings before the Committee or in its decision, but this is true of most appellate processes.*

34. It is true that the Board's powers of intervention may be circumscribed by the circumstances in which they are invoked, particularly in the case of appeals against sentence. But their Lordships wish to emphasise that their powers are not as limited as may be suggested by some of the observations which have been made in the past. In Evans v General Medical Council (unreported) Appeal No 40 of 1984 at p. 3 the Board said:

> *"The principles upon which this Board acts in reviewing sentences passed by the Professional Conduct Committee are well settled. It has been said time and again that a disciplinary committee are the best possible people for weighing the seriousness of professional misconduct, and the Board will be very slow to interfere with the exercise of the discretion of such a committee. …The Committee are familiar with the whole gradation of seriousness of the cases of various types which come before them, and are properly well qualified to say at what point on that gradation erasure becomes the appropriate sentence. This Board does not have that advantage nor can it have the same capacity for judging what measures are from time to time required for the purpose of maintaining professional standards."*

For these reasons the Board will accord an appropriate measure of respect to the judgment of the Committee whether the practitioner's failings amount to serious professional misconduct and on the measures necessary to maintain professional standards and provide adequate

[1] Pursuant to section 40(5)(c) of the Medical Act 1983 Appealable decisions in England and Wales are now made directly to the High Court.

protection to the public. But the Board will not defer to the Committee's judgment more than what is warranted by the circumstances. The Council conceded, and their Lordships accept, that it is open to them to consider all the matters raised by Dr. Ghosh in her appeal; to decide whether the sanction of erasure was appropriate and necessary in the public interest or was excessive and disproportionate; and in the latter event either to substitute some other penalty or to remit the case to the Committee for reconsideration."

67. Mr. Stevens pointed to the decision in *Papps v Medical Board of South Australia* [2006] SASC 234 [32-34]:

"*32. Cox J in Wigg v Architects Board (1984 36 SASR 111 at 112-113 undertook an examination of the different types of appeal that may be created with respect to the decisions of judicial and administrative bodies. Martin J adopted this analysis in Thompkins v South Australian Health Commission [2001] SASC 147 at [28]-[31]:*

> *His Honour identified three types of appeal. First, an appeal "strictly so called" in which the question is whether the judgment complained of was right when given and there is no issue of introducing fresh evidence in the appeal court. All that is decided is whether the court below came to the right decision on the material that was before it.*
>
> *The second type of appeal identified by Cox J is the appeal by way of rehearing. His Honour described this appeal as follows (p 111):*
>
>> *"This is a rehearing on the documents, but with a special power to receive further evidence on the appeal. The latter power is necessary, because the question on a rehearing of this kind is whether the order of the court below ought to be affirmed or overturned in the light of the material before the appeal court at the time it hears the appeal."*
>
> *The third type identified is an appeal de novo in which the appeal court hears the matter afresh. Regardless of which party appeals, the appeal is conducted as an original cause and all the evidence is given afresh unless the parties agree to the material used before the original body being used on the appeal. The judge who hears such an appeal will determine the question upon the material presented before the judge and will not be limited in any way by the decision that has been made by the body appealed from.*
>
> *As Cox J observed (p 113):*
>
> *"Which type of appeal is given by a particular Act will depend upon its construction. The use of the word "rehearing" will not be decisive, because that is a word to which different meanings have been given…. It will be a matter of discerning*

Parliament's intention from an examination of the legislation as a whole." (footnotes omitted)

33. Which of these three kinds of appeal is designated by a statutory provision will depend upon the legislative intention as disclosed by an examination of the legislation as a whole [foot note omitted]. *Both Cox J and Martin J observed that a statutory appeal procedure does not always fit easily into one of the three categories. It is open to the legislature to create any kind of appeal, including an appeal that combines features of one or more of the traditional categories.*

34. Ultimately, the nature of the appeal must depend on the terms of the statute conferring the right. [foot note omitted] *Section 66 of the Medical Practitioners Act confers wide powers upon a single judge of this Court. It provides that the hearing is to be a rehearing on the documents, but with the power to receive further evidence on the appeal*."

68. At paragraph 7 of the Appellant's written submissions it is submitted:

"*…In accordance with O.55 r 3 this appeal takes the form of a complete rehearing of the merits of the Appellant's application for registration. This is an important point: unlike an application for judicial review, in this appeal the Court is not concerned with whether the Respondent acted reasonably in denying the Appellant's application, or whether the process followed by the Respondent was fair and transparent. Instead, the Court must in effect stand in the shoes of the Respondent and decide whether, in accordance with the relevant provisions of the Act, the Appellant should be registered as a medical practitioner in Bermuda*."

69. In *Papps v Medical Board of South Australia*, the fully constituted Supreme Court (being the Court of highest jurisdiction of South Australia) identified three distinct classes of appeals and esteemed that the type of appeal which will be conducted will depend on an interpretation of the relevant statute, as a whole.

70. However, in reality, the form of "rehearing" will not only be determined by a judicial construction of the provisions under RSC O.55/2-7 but on the circumstances of each case. There will be cases where the tribunal of first instance settled their decision on a record of documents which contain uncontested facts which need not be supplemented by new evidence for the purpose of the appeal proceedings. In such cases, the parties would likely be in pursuit of nothing more than a fresh analysis of the original record which would be firmly tied to an assessment as to whether the original tribunal erred.

71. In other cases, like the present case, a Court of this jurisdiction may receive newly filed evidence introducing fresh facts which were not before the tribunal of first instance. Such evidence would also be subject to testing through the process of cross-examination, as did occur in the present case. In this latter type of appeal, the appeal process takes on the appearance of a new trial for fresh adjudication and is more comparable to an appeal *de novo*.

72. In both of the above examples of a rehearing under RSC O.55 the Court is primarily concerned with formulating its own assessment of the case, as if it was appropriating all of the seats of the decision makers whose decision is being appealed. It thus follows for cases where new evidence is heard, that the Court will be less concerned with the wrongness of the decisions of the original tribunal than with the merits of the case presented before it, so long as the appellate Court does not, in doing so, exercise any powers or apply any rules which would not have been open to the original tribunal to make. After all, the Court is tasked to find what the tribunal should have found. This is consistent with the Privy Council's recognition that the Board's jurisdiction in the *Ghosh* case was appellate as opposed to supervisory.

73. (The same is so for civil appeals from both the Magistrates' Court and the Court of Appeal. In the case of civil appeals from the Magistrates' Court, the Civil Appeal Rules 1971 do not expressly state the manner in which civil appeals shall be heard. However, section 14 of the Civil Appeal Rules 1971 gives way to the application of the Rules of the Court of Appeal in respect of any matter which is not expressly provided for under the 1971 Rules. The manner in which civil appeals are heard is not provided for under the Rules of the Court of Appeal but section 15 of the Court of Appeal Act 1964 provides: "*Subject to any Rules, all civil appeals shall be by way of re-hearing…*")

74. The process of an appeal by re-hearing is to be contrasted to a criminal appeal which will ordinarily be allowed on the basis of some form of miscarriage of justice in the conduct of the original trial (barring exceptional circumstances where fresh evidence is permitted by the Court). Pursuant to section 16(1) of the 1952 Act a criminal appeal shall be heard by way of argument upon the record of the proceedings taken before the summary court.

Reasons for Decision:

75. The pivotal question in this case is whether the Appellant has established on a balance of probabilities that he is an applicant of good character for the purpose of his eligibility for registration as a medical practitioner in Bermuda. I must ask myself: If this matter, with all of the evidence and submissions before me, was before the BMC, what should they find?

76. The evidence which may be considered in assessing Dr. Qamar's character is broad in scope. The Appellant's Counsel strenuously contend that the BMC were barred from having regard to the allegations and evidence underlying the *qui tam* claims and the FDOH Complaint primarily because no findings of wrong were reached by any Court in the US or the Florida Board of Medicine or any other quasi-judicial body in the US. However, this, in principle, is flawed.

77. The BMC was entitled to conduct its own inquiry into the settled *qui tam* claims for the purpose of regulating its own process for registering medical practitioners under section 7 of the 1950 Act. This is analogous to the FDOH's decision to investigate the *qui tam* allegations after they had already been settled between Dr. Qamar and the DOJ and the OIG. The Florida Medical Board's acceptance of the FDOH settlement was no more binding on the BMC than the

DOG/OIG *qui tam* settlements were on the FDOH, particularly because those facts were never adjudicated in any formal way. They were merely settled without any conclusive factual findings.

78. That being said, the BMC was, of course, duty-bound to conform to the constitutional principles of natural justice in any efforts it might have undertaken to assess the Appellant's character through the evidence underlying those *qui tam* claims.

79. The fact of the matter is that the Decision of 24 September 2019 accepted on its face that the *qui tam* claims were unproven and the BMC made no independent findings of fact on that evidence. The BMC also acknowledged that the Probable Cause Panel concluded that there was 'no probable cause' in relation to the FDOH Complaint. In the Decision, the BMC confirmed [paras 43-44]:

"*43. The Committee has taken into account Dr. Q's emphasized point that there was no requirement of any admission of wrongdoing by Dr. Q or ICE as a condition of agreement to the Settlement.*

44. The Committee has further taken into account that the resulting FDOH Complaint Case…was dismissed without a finding of probable clause [sic] [cause] *after the DOH's 2017 investigation into the matters…*"

80. Mr. Stevens was critical of the 'extensive' media quotes in the Decision intimating that the Committee relied on these publications in forming their findings on the Appellant's eligibility. Mr. Stevens further pointed to Dr. Ross' subsequent remarks divulging the additional concerns that the Credentials Committee had about the likelihood of the Bermuda public's opinion of Dr. Qamar. I accept that narratives in the media and widespread public impressions (which do not accord with an informed, reasonable and objective view) are extraneous and to that extent incapable of supporting any proper deliberation. However, on my analysis of the Decision of 24 September 2019, it is clear that the BMC's refusal of the Appellant's application was not based on these irrelevant distractions. The BMC's conclusion that the Appellant failed to show that he is of good character arose out of the Credential Committee's findings that Dr. Qamar did not act with honesty, integrity or transparency in providing his 'no' response to Question 3 on the Application Form.

81. In the rehearing of this matter, the Respondent asks for this Court to find that the responses to both Questions 3 and 4 were dishonest and/or misleading. Having careful regard to all of the evidence, this Court must make its own assessment on the following questions which are disputed between the parties:

    i. Were the 'no' responses to Questions 3 and 4 accurate?
    ii. If so, were the 'no' responses accurate but also misleading?
    iii. If so, were the accurate but misleading 'no' responses dishonestly provided?
    iv. If so, was any such act of dishonesty sufficient to defeat the Appellant's case that he is of good character for the purpose of section 7 of the 1950 Act?

82. Questions 3 and 4 provided:

“…
3. Has any disciplinary action been taken against you by any medical authority?

4. Have you had privileges denied, revoked or restricted in a hospital or other health care facility?
…”

83. In relation to Question 3, I see no reason to ascribe a narrow meaning to the term ‘disciplinary action’. The plain and literal meaning of the word ‘disciplinary’ in the context of ‘disciplinary action’ simply means an action which is intended to punish or correct a wrong. The term ‘disciplinary action’ would apply to any stage of disciplinary proceedings once a complaint has been filed for the prosecution of a disciplinary matter. In other words, ‘disciplinary action’ is not synonymous to ‘disciplinary penalty’. The former is obviously broader in scope.

84. I accept the Appellant’s averment that the term ‘medical authority’ does not apply to investigatory and prosecutorial bodies such as (i) the Office of the Inspector General (“OIG”), (ii) the Department of Health and Human Services or (iii) the civil division of the US Department of Justice (“DOJ”). However, the Center for Medicare and Medicaid services (“CMS”) qualifies, in my judgment, as a ‘medical authority’ having regard to its executed powers and authority to impose the Federal and State bans on Medicare and Medicaid services, against which Dr. Qamar filed an appeal. The fact that the CMS might more accurately be described as a medical insurance authority does not exclude it from the generic term “medical authority”.

85. On this basis, I find that Dr. Qamar’s tick in the ‘no’ box to Question 3 was untruthful as he had had in fact received disciplinary action in April 2015 (i.e. the suspension of Medicare and Medicaid services as a result of a data analysis showing that he excessively billed for medical services) from a medical authority (i.e. CMS). The correct answer would have been ‘yes’. Of course, it would have then been open to Dr. Qamar to explain the subsequent developments and make out any case required to dispel the BMC of any possible concerns.

86. Dr. Qamar also had a duty to disclose his pending administrative penalties. Approximately one month prior to the submission of Dr. Qamar’s application form, he had agreed terms of settlement of the FDOH’s Administrative Complaint on 10 September 2018. This, as I have outlined earlier herein, was not finalized by the Florida Medical Board until the Final Order was made on 28 February 2019. Dr. Qamar knew this but sought to take advantage of the fact that he could escape disclosing this on the basis of a technical truth. While a ‘no’ response was just accurate, it was also undeniably misleading.

87. Question 4 refers specifically to the denial, revocation or restriction of ‘privileges’ in a hospital or other health care facility. The Appellant maintained that the term ‘privileges’ in Question 4 does not apply to Medicare or Medicaid privileges. The Appellant’s case is that these are US Government insurance coverage privileges which are to be distinguished from the privileges which are given by a hospital or health care facility. Here I would observe that Question 4 asks

whether privileges were … "*revoked…* ***in*** *a hospital or other health care facility*". Question 4 does not ask whether privileges were revoked *by* a hospital or other healthcare facility. The revocation of Medicare or Medicaid privileges is plainly relevant and applicable to Question 4.

88. I shall consider the alternative position that the Appellant's proposed construction is narrowly (as opposed to obviously) correct. However accurate it could possibly be, I find that Dr. Qamar's selection of 'no' absent any further explanation was overall misleading because the obvious purpose of the application process is for the BMC to acquire all the relevant information about the applicant's background. So, even on this alternative synopsis, I find that a full and transparent response to Question 4 would include disclosure of the revocation of Medicare or Medicaid privileges.

89. In reality, the saga of the *qui tam* claims, the resulting Medicare/Medicaid bans, the FDOH Complaint and the resulting settlement in disciplinary penalties all culminated in a tremendous financial and reputational fall for the Appellant. It is far from believable that the Appellant would have omitted to disclose any one of these facts due to any oversight. I reject Dr. Qamar's evidence where he stated in his witness statement; "*After February 2019 I did not tell the Respondent about the letter of concern because, to be frank, it did not occur to me to do so.*" It is clear and obvious to this Court that Dr. Qamar's decision to answer 'no' to Question 4 without qualifying his response with an explanation was intentional.

90. This is further evidenced by Dr. Qamar's oral evidence before me wherein he divulged that he went so far as to obtain legal advice regarding his intended responses on the Application Form. In my judgment, Dr. Qamar took calculated steps in furtherance of his ultimate aim to dishonestly conceal this relevant information from the BMC. I had the advantage of assessing Dr. Qamar's oral evidence during which he said that that he initially expected to be interviewed after submitting the initial two-page Application Form. According to him, he anticipated a subsequent opportunity to more fully explain his background. However, I do not accept that Dr. Qamar ever intended to volunteer the fuller picture of his disciplinary penalties and Medicare/Medicare privilege suspensions.

91. He told this Court that he wrongly believed that the issuance of an application receipt number was confirmation of his registration as a medical practitioner in Bermuda. At this point he assumed the registration process in Bermuda to be quick and easy and absent of any due-diligence checks. As far as Dr. Qamar was concerned, he had successfully registered to practice in Bermuda without ever having to disclose the disciplinary penalties imposed under the FDOH Settlement or the Medicare/Medicaid suspensions. However, in the event that he was to be more fully discovered, he was prepared to say, and did say, that he could not possibly have been attempting to hide from what was in plain public sight on the internet. Of course, this planned and foreseeable response would only be used if and when he was to be caught. In my judgment, that is clear dishonesty.

92. It now remains for me to consider whether this act of dishonesty is enough to undermine the other evidence probative of Dr. Qamar's good character. I must thus factor into consideration that Dr. Qamar does not have any record of criminal convictions or civil wrongs. I must also

be mindful that he has led a long and highly-esteemed career without any such findings against him. He has never been refused on a renewal application for his medical licence and he has no previous penalty recorded against his medical licence in the US. I have also paid due attention to the admissible portions of Mr. Geer's evidence describing Dr. Qamar as an honest and upfront professional person.

93. (I pause here to note that I excluded from my deliberations all portions of non-admissible opinion evidence from both Mr. Geer and Dr. Doherty's witness statements. Also, for the avoidance of any doubt, I make no assessment of Dr. Qamar's character by reference to the evidence relating to the *qui tam* claims, investigations or any of the settlements which followed. For the purpose of this part of my assessment, I proceed on the basis that Dr. Qamar's character is entirely unscathed by any of this history.)

94. Mr. Stevens stressed that in each of the previous cases placed before me the wrongs committed by the professional persons concerned were proven and even more serious than any allegation made against Dr. Qamar. I would, however, observe that in the *Ghosh* case one of the two infractions reported against Dr. Ghosh involved the inaccurate completion of a cremation form. The factual example provided by the Board, which one may reasonably assume to be among the more substantial examples of the inaccuracies on the form, was that Dr. Ghosh falsely stated that she was the ordinary medical attendant of the deceased when she was in fact employed as a locum for Dr. Subramanian. In this respect, the Professional Conduct Committee of the General Medical Council found that she did not take sufficient care in filling in the deceased patient's cremation form. That being said, I nonetheless accept that on the totality of the facts in the Ghosh case, the infractions amount to what one may describe as serious professional negligence.

95. In this case, Dr. Qamar's conduct amounts to dishonesty, which in my judgment is indeed also serious in nature. I find that Dr. Qamar's dishonest concealments from the Application form submitted on both 19 October 2018 and 28 November 2018 are serious enough to dispel his otherwise arguable case that he is of good character for the purpose of section 7 of the 1950 Act.

96. For these reasons, I see no reason to disturb the Credential Committee's September 2019 Decision on behalf of the BMC.

Conclusion:

97. The Appeal is dismissed on all grounds.

98. Unless either party files a Form 31TC to be heard on the subject of costs, I direct that costs shall follow the event in favour of the Respondent on a standard basis, to be taxed by the Registrar if not agreed.

Tuesday 2 February 2021

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THE HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT