



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case number: 143815/2025

Date: 3 November 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHERS JUDGES: NO	
(3) REVISED	
3 November 2025	 SIGNATURE
DATE	

In the matter between:

GREGORY ARTHUR HOUGH

Applicant

and

**THE PRESIDENT: HEALTH PROFESSIONS
COUNCIL OF SOUTH AFRICA**

First Respondent

**THE HEALTH PROFESSIONS COUNCIL OF
SOUTH AFRICA ("HPCSA")**

Second Respondent

ADVOCATE D D MOGOTSI N.O.

Third Respondent

[Member: Professional Conduct Inquiry]

DR K N L LINDA-MAFANYA N.O.

Fourth Respondent

[Member: Professional Conduct Committee]

DR K T NGOYI N.O.

Fifth Respondent

[Member: Professional Conduct Committee]

PROFESSOR W F MOLLENTZE N.O.

Sixth Respondent

[Member: Professional Conduct Committee]

MR S T MABUNDA N.O.

Seventh Respondent

[Member: Professional Conduct Committee]

THE REGISTRAR: HEALTH PROFESSIONS

COUNCIL OF SOUTH AFRICA

Eight Respondent

MR T BALOYI N.O.

Ninth Respondent

[*Pro forma* complainant]

JUDGMENT

MINNAAR AJ:

Introduction:

[1] Initially, the applicant, who practised as a specialist endocrinologist, was charged with seven counts of unprofessional conduct or conduct that, when regarded in the context of his profession, is unprofessional. All seven counts related to incidents that occurred in 2013 and 2014. The complaints were laid in 2020 and related to allegations of various forms of sexual assault. There were three complainants, all of whom were female patients of the applicant.

[2] The conduct inquiry proceedings were initially scheduled for 6 and 7 September 2023. It is common cause that the applicant did not attend on these dates.

The proceedings then proceeded on 25 October 2023. On this date, the Conduct Committee called Dr Pillay to testify. Dr Pillay's testimony revolved around a sick note that she issued and which was presented on behalf of the applicant. The applicant, through Bruce Scott Attorney,

made an application requesting that the inquiry be stood over pending the finalisation of an application for a permanent stay of the proceedings. This request was dismissed, resulting in the applicant's attorneys being obliged to withdraw.

On 27 October 2023, a new legal representative (Mr Van den Berg) appeared on behalf of the applicant seeking a postponement as he was unable to prepare on such short notice. The request for a postponement was dismissed, resulting in the applicant's second legal representative withdrawing from the record. On this day, the applicant also excused himself from the proceedings. The inquiry proceeded *in absentia*, and the charges were put to the applicant. A plea of not guilty was tendered, and the inquiry was postponed to 22 November 2023 for further evidence.

On 1 November 2023, the applicant, in person, delivered a complaint against the Chairperson (the third respondent herein), which also embodied an application for the Committee's recusal. The applicant then reappointed Bruce Scott, Attorney (who is still representing the applicant herein). An urgent application followed, and the matter was settled on the basis that the inquiry would be held over pending a recusal application and/or review thereof.

The recusal application was heard and dismissed in December 2023. The inquiry was postponed to 31 January 2024. The applicant failed to institute a review against the recusal order, and on 31 January 2024, a ruling was made that the inquiry would proceed on 21 February 2024.

On 20 February 2024, the applicant issued the review application.

A second urgent application was launched to hold over the inquiry pending the finalisation of the review. This urgent application was struck from the roll due to a lack of urgency.

The inquiry thus proceeded, with the review application being held in abeyance.

[3] On 3 June 2025, the applicant was found guilty on counts 1 and 2. The applicant was acquitted on charges 3, 4, 5, 6, and 7, as these charges were declared *pro non scripto* since the complainant in these charges was not cross-examined.

[4] On 24 July 2025, in terms of section 42(1)(c) of the Health Professions Council Act, Act 56 of 1974 ('the Act'), the applicant's name was removed from the register, resulting in the applicant being unable to practise as a medical practitioner.

[5] The applicant is challenging both the conviction and the sanction imposed on him. On 15 August 2025, the applicant lodged an internal appeal in terms of Regulation 11 of the Regulations relating to the Conduct of Inquiries into Alleged Unprofessional Conduct under the Act ('the internal appeal'). The applicant's review under case number 018261/2024 is also still pending. The applicant further envisages that, should he not be successful with his internal appeal, he would institute an appeal in terms of section 20 of the Act ('the envisaged appeal').

[6] The applicant proceeded to approach this Court on a semi-urgent basis to obtain an interim interdict to suspend the sanction imposed, effective immediately, pending the pending appeal and review, as well as the envisaged appeal.

[7] The first, second and eighth respondents (jointly referred to in this judgment as 'the respondent') are opposing this application.

[8] In terms of the joint practice note, the following issues are not in dispute between the parties:

- a. Urgency;
- b. That the applicant establishes irreparable harm; and
- c. That the applicant has no other suitable remedy other than to approach this Court.

[9] The urgency, the irreparable harm that the applicant is suffering and the absence of another suitable remedy all revolve around the applicant's ability to earn an income and the financial impact the sanction has on the applicant.

[10] According to the joint practice note, the following aspects are in dispute:

- a. The applicant's prospects of success in setting aside the conviction and/or sanction in the pending appeal and/or review and/or the envisaged appeal.

- b. The applicant's prejudice should the sanction that was imposed, continues to operate, prohibiting him from practising as a medical doctor;
- c. Whether the applicant has shown a *prima facie* right; and
- d. Whether the balance of convenience favours the applicant or the respondents.

Section 42(1A) of the Act:

[11] Under 'normal' circumstances, it is usually the position that the operation and execution of a decision, which is the subject of an appeal process, is suspended pending the decision of the appeal.

[12] The Act, however, does not provide for 'normal' circumstances. The Act regulates the health professions. The HPCSA is "... *a statutory custos morum of the medical profession, the guardian of the prestige, status and dignity of the profession and the public interest in so far as members of the public are affected by the conduct of members of the profession to whom they had stood in a professional relationship.*"¹

[13] The Court is bound to consider this application in terms of the provision of section 42(1A) of the Act, which reads: "*If an appeal is lodged against a penalty of erasure or suspension from practice, such penalty shall remain effective until the appeal is finalised.*"

¹ *Veriava v President, South African Medical and Dental Council* 1985 (2) SA 293 (T) at 307B

[14] Section 42(1A) is clear: irrespective of an appeal against a penalty of erasure or suspension from practice, such a penalty shall remain in place. In applications of the nature as the one before this Court, we are therefore not faced with 'normal' circumstances.

[15] The purpose of section 42(1A) is to protect the public against a medical practitioner, exercising his or her rights of appeal and/or review. In effect, section 42(1A) closes the door of practice for a medical practitioner whose name was removed from the register.

[16] Although section 42(1A) speaks of an appeal, there is nothing to indicate that it would not also cater for review proceedings.

[17] Under 'normal' circumstances, an applicant who applies for an interim interdict pending a review application has to satisfy the court that there are good prospects of success in the application. This can be demonstrated by showing that the review is based on strong grounds that are likely to succeed.²

[18] The test to be applied in the application of the Act would be more stringent, and the applicant must show exceptional circumstances before an interim interdict will be granted.³ This is because the applicant seeks to intervene in a statutory provision that an appeal (and by

² Cf. *Economic Freedom Fighters v Gordhan and Others* 2020 (6) SA 325 (CC) at para [42]

³ *Pretorius v HPCSA* 2024 JDR 2599 GP at par [45]

implication a review) would not impose or suspend the effect of the sanction.

[19] It is trite that the courts should recognise the separation of powers afforded to functionaries. In *Bato Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* 2004 (4) SA 490 (CC) at para 48, the Constitutional Court stated that: *"In treating the decisions of administrative agencies with the appropriate respect, a Court is recognising the proper role of the Executive within the Constitution. In doing so a Court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government. A Court should thus give due weight to findings of fact and policy decisions made by those with special expertise and experience in the field. The extent to which a Court should give weight to these considerations will depend upon the character of the decision itself, as well as on the identity of the decision-maker. A decision that requires an equilibrium to be struck between a range of competing interests or considerations and which is to be taken by a person or institution with specific expertise in that area must be shown respect by the Courts. Often a power will identify a goal to be achieved, but will not dictate which route should be followed to achieve that goal. In such circumstances a Court should pay due respect to the route selected by the decision-maker. This does not mean, however, that where the decision is one which will not reasonably result in the achievement of the goal, or which is not reasonably supported on the facts or not reasonable in the light of*

the reasons given for it, a Court may not review that decision. A Court should not rubber-stamp an unreasonable decision simply because of the complexity of the decision or the identity of the decision-maker."

[20] In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) at par 63, the Constitutional Court stated: *"There is yet another and very important consideration when the balance of convenience is struck. It relates to separation of powers. In ITAC we followed earlier statements in Doctors for Life and warned that —*

'(w)here the Constitution or valid legislation has entrusted specific powers and functions to a particular branch of government, courts may not usurp that power or function by making a decision of their preference. That would frustrate the balance of power implied in the principle of separation of powers. The primary responsibility of a court is not to make decisions reserved for or within the domain of other branches of government, but rather to ensure that the concerned branches of government exercise their authority within the bounds of the Constitution. This would especially be so where the decision in issue is policy-laden as well as polycentric".

[21] The Constitutional Court stated in *Economic Freedom Fighters v Speaker of the National Assembly* 2016 (3) SA 580 (CC) at para 92: *"The judiciary is but one of the three branches of government. It does not have unlimited powers and must always be sensitive to the need to refrain*

from undue interference with the functional independence of other branches of government. It was with this in mind that this court noted: 'Courts must be conscious of the vital limits on judicial authority and the Constitution's design to leave certain matters to other branches of government. They too must observe the constitutional limits of their authority. This means that the judiciary should not interfere in the processes of other branches of government ... "

[22] In *Peer v Chairperson: Medical and Dental Professions Board and Others* (76888/2010) [2010] ZAGPPHC 246 (24 December 2010), Botha J held: "... it is clear that the legislator did not grant the court, or the appeal committee, or any official, the power to grant relief from the harsh effect of section 42(1A) if an appeal is noted against an erasure or a suspension."

[23] The Act entrusted the Professional Conduct Committee with discretion, and this Committee exercised that discretion by finding the applicant guilty on the two charges and imposing the sanction. The legal position, as set out in *Bato Star Fishing supra*, is clear, and it is not for this Court to intervene with such discretion.

The applicant's prospects of success in the pending appeal and/or review and/or envisaged appeal: *prima facie* right:

[24] To establish a *prima facie* right, the applicant must demonstrate a good prospect of success in the main application. In amplification,

exceptional circumstances must be shown before an interim interdict will be granted.⁴

[25] It is not for this Court to make a definite finding on the applicant's prospects of success in the pending appeal and/or review and/or the envisaged appeal. What the Court should be satisfied with is that there is a strong case for the interim relief to be granted, being mindful only to grant the interim relief under exceptional circumstances.

[26] The review application is premised on the alleged bias of the members of the Professional Conduct Committee and the failed recusal application.

The pending appeal concerns the handling of evidence, specifically how it was accepted, interpreted, and applied by the Committee. The appeal also challenges the severity of the sanction imposed.

[27] When the applicant did not appear when the charges were put to him, a plea of not guilty on all the charges was recorded. Thereafter, the applicant was legally represented, and he was able to cross-examine witnesses and make submissions before his conviction and the imposition of the sanction. The applicant was charged and found guilty of sexual misconduct, not of some intrinsic aspect of medical negligence. The Committee was in the best position to consider and evaluate the evidence presented to it. It is further a trite position that an appellate

⁴ *Pretorius v Health Professions Council of South Africa and another* 2024 JDR 2599 (GP) at par 45

body should be slow to intervene in a sanction unless such a sanction is shockingly disproportionate.

[28] Upon analysing the record of proceedings, the manner in which the inquiry was conducted, the charges laid, evidence presented and being challenged, the probabilities on the evidence, the conviction, and the sanction imposed, I cannot find that any of these grounds constitutes a strong prospect of success on either the review and/or the pending appeal or the envisaged appeal.

The applicant's prejudice should the interim order not be granted:

[29] The applicant's prejudice is of a financial nature in that he cannot earn an income as a medical practitioner. It is inescapable to find that the sanction, in fact, prejudices the applicant.

[30] Prejudice is but one of the requirements that have to be met. It cannot be looked at in isolation and does not, on its own, warrant an interim order.

The balance of convenience:

[31] Returning to the purpose of section 42(1A): it is meant to shut the doors of a medical practice pending an appeal. The sole purpose of section 42(1A) is to protect the public against a medical practitioner who has been suspended or whose name has been removed from the

register. This statutory protection of the public is where the respondent's balance of convenience vests.

[32] The applicant's balance of convenience centres around his ability to earn an income and to make a living. These are serious aspects to consider.

[33] The charges relate to sexual misconduct towards female patients and are not premised on any medical negligence. South Africa is plagued by the sexual exploitation of women and children, and as such, the courts, almost daily, express themselves on this aspect.

[34] The purpose of section 42(1A) is to protect the public. In my view, that protection becomes more prevalent where a medical practitioner is convicted of sexual misconduct. Unless there are exceptional circumstances present, the doors of such a medical practice should not be opened pending the exercise by the medical practitioner of his rights of appeal.

[35] The applicant's financial detriment does not constitute exceptional circumstances, and as such, the balance of convenience convincingly favours the respondent herein.

[36] In amplification, and as already stated, it is not for this Court to intervene with the statutory discretion imposed by section 42(1A). As such, it follows that the balance of convenience favours the respondent.

Conclusion:

[37] The applicant has failed to show exceptional circumstances to warrant the granting of an interim interdict. It is not for this Court to intervene in the stringent dictates of section 42(1A). It follows that the application must be dismissed.

Costs:

[38] There is no reason why costs should not follow the outcome. The respondent prayed for costs on scale C, and such costs are justified.

Order:

[39] Consequently, I make the following order:

1. The application is dismissed.
2. The applicant is ordered to pay the costs of the application on scale C.


Minnaar AJ
Acting Judge of the High Court
Gauteng Division, Pretoria

Heard on : 10 October 2025
For the Applicant : Adv. M Hugo
Instructed by : Bruce Scott Attorney
For the Respondent : Adv. J G Rautenbach SC
Instructed by : Tlhatlha Attorneys
Date of Judgment : 4 November 2025