THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

CLAIM NO. SKBHCV2017/0169

IN THE MATTER of the Medical Act CAP 9.15 of the Laws of the Federation of St. Christopher and Nevis

And

IN THE MATTER of the Institution Based Health Services (Management) Regulations No. 26 of 2002

And

IN THE MATTER of an Application for Declaratory and Other Reliefs by Dr. Crawford M.D. pursuant to Section 24 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act and Rule 56.1(b), 56.1(4)(a) of the CPR, 2000 as Amended

BETWEEN:

DAIL CRAWFORD

Claimant

and

1. MEDICAL BOARD OF SAINT CHRISTOPHER AND NEVIS
2. THE MEDICAL CHIEF OF STAFF OF THE JOSEPH NATHANIEL FRANCE GENERAL HOSPITAL
3. THE ATTORNEY GENERAL OF CHRISTOPHER AND NEVIS

Defendants

Appearances:

Mr. Perry Joseph for the Claimant
Mrs. Simone Bullen Thompson, Solicitor General, with Mrs. Tashna Powell Williams for the Defendants

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2018: December 12
2019: March 11

JUDGMENT

[1] **VENTOSE, J**.: The Claimant is a medical doctor, having graduated in 2006 with a degree in general medicine from the Rector of the Higher Institute of Medical Sciences of Camaguey, Cuba, and graduated in 2011 with another degree from the Rector of the Latin American School in Cuba with a specialization in the field of gynecology and obstetrics (OB/GYN). The Claimant applied for and was duly registered on 4 August 2006 as a general practitioner by the Medical Board of Saint Christopher and Nevis (the "**Medical Board**").

[2] In December 2011, the Claimant commenced working for the Government of Saint Christopher and Nevis as a Specialist OB/GYN at the Joseph N. France General Hospital (the "**Hospital**"). On completion of his period of observation or orientation, the Claimant was granted permission to practice independently and applied for and was granted, in March 2012, permission to use the Hospital's facilities for his private patients. This permission to use the Hospital to treat patients by either medical practitioners employed in the public service or those in the private sector is known as "privileges". The evidence indicates that the usual practice is that medical practitioners who wish to use the Hospital's facilities apply for permission from the Ministry of Health (the "**Ministry**"). Once the Ministry receives a request it is sent to the Executive Management Committee (the "**EMC**") for its review and recommendation. The EMC then meets with the medical practitioner to determine how best to accommodate the request for access to the Hospital's facilities and to discuss the expectations, if the privilege is granted. The EMC then sends its recommendation to the Permanent Secretary in the Ministry (the "**Permanent Secretary**"). The Ministry makes the final decision on whether to grant or refuse permission or the "privilege" to use the facilities at the Hospital. The Permanent Secretary usually sends a formal letter to the medical practitioner who made the request indicating whether or not the privilege is granted, and if so, setting out the

scheduling accommodations that have been made and the conditions of use. This process is considered necessary because of the Hospital's limited resources and the need to coordinate the work of many medical practitioners and medical staff.

[3] In or around 2013, complaints were being made about the standard of care and competence of the Claimant in respect of his medical and surgical treatment of patients at the Hospital and in respect of those in his private practice. Some of these complaints were outlined at a meeting of the EMC on 21 June 2013 that was called to discuss "patient management care" with the Claimant (the "**EMC Meeting**"). At the meeting, the cases of concern were outlined by the Medical Chief of Staff (the "**MCS**"). It is not necessary to provide the details of each case except that they related to what the EMC determined to be the Claimant's lack of the standard of care required for diagnosis, surgical procedure and post-operative treatment of his patients. The MCS in his affidavit provides the details of the cases that were discussed at the EMC Meeting and these cases are together known as the "**2013 Cases**".

[4] The decisions of the EMC taken at the EMC Meeting were as follows. First, the Claimant was to be placed on a six-month period of observation and evaluation. Second, the Claimant was not allowed to book any intra-abdominal invasive procedures on his own, for example c-sections, hysterectomies and myomectomies during that period. It was determined that these were the areas in which the Claimant needed assistance to improve his technical skills. In the interim, these procedures were to be conducted by Dr. Ruben Coca with the Claimant assisting him to improve any technical deficiencies he might have. Third, the Claimant was mandated to attend Wednesday morning continuing medical education sessions to assist him in improving his clinical decision-making skills. The notes of the meeting revealed that the Claimant stated that: (1) there were shortcomings (presumably in his patient care and surgical procedures); (2) he wanted to do his best; and (3) he needed the help of others to enable him to improve. However, in his affidavit in support of his application for judicial review

the Claimant avers there are no deficiencies or professional misconduct in his handling of the 2013 Cases.

[5] The MCS wrote to the Claimant on 24 June 2013 reiterating the findings made above. The Claimant resumed independent practice after Dr. Coca informed the MCS on 22 December 2013 that the Claimant was fit to practice independently. However, there were further complaints concerning the diagnosis, medical and surgical treatment of patients by the Claimant, which are documented in the affidavit of MCS (see [20]-[24]). The MCS on 25 June 2014 wrote to the Permanent Secretary in respect of the clinical management of the Claimant and to inform him about a complication involving one of the Claimant's patients. Again on 25 July 2014, the MCS wrote to the Permanent Secretary in relation to a letter received by the MCS from an attorney-at-law dated 21 July 2014 in relation to the surgical treatment of a patient by the Claimant to remove that patient's ovarian cyst. The MCS in an undated letter to the Claimant informed him that on 3 September 2014 the MCS had to operate on a patient on whom the Claimant had performed an abdominal operation on 4 February 2014. The MCS informed the Claimant there was no documentation in respect of the Claimant's surgical findings and the Claimant was reminded that it was an expectation of any surgeon performing surgery properly to document his or her surgical findings. The Claimant was informed that he must provide the documentation in respect of that patient, and that a failure to do so will result in the suspension of his privileges to use the operating theatre. The Claimant replied to the MCS on 29 September 2014 questioning whether this action was the usual consequence of a failure to document clinical findings, adding that he looked forward to any constructive criticism, as they would serve to enhance his professional skills as a young surgeon.

[6] On 10 September 2014, the Claimant was sent a notice by memorandum from the MCS to attend a meeting in the Hospital's conference room on 12 September 2014 to address "a recent case of pseudocyesis… and a few other matters" that were brought to the MCS's attention by the nursing staff. At the meeting called by

the MCS that took place on 12 September 2014 (the "**MCS Meeting**") additional cases were discussed, as documented in the affidavit of the MCS (at [26]-[28]). At the MCS Meeting, the MCS decided to suspend immediately the Claimant's privileges as an independent specialist working at the Hospital pending further word from the Permanent Secretary and input from the Medical Board. On 12 September 2014, the MCS wrote to the Permanent Secretary outlining what transpired at the MCS Meeting. It is of interest to note that the MCS states that the following persons were present at the meeting: Assistant Matron, Ms. Adams, maternity nursing staff, the Claimant, Dr. Coca and Dr. Jeffers. The importance of this will be explored fully later in this judgment. In that letter, the MCS states that the Ministry "had an obligation to protect the public and deliver the highest possible health care in a safe environment". The Permanent Secretary replied to the MCS on 15 September 2014 and "in the interest of the general public" agreed with the decision taken by the MCS, noting that he would bring the matter to the attention of the Minister of Health. Complaints continued in relation to the diagnosis, medical and surgical treatment of patients by the Claimant and these are further documented in the affidavit of the MCS (at [38]-[43]).

[7] On 23 September 2014, the Claimant wrote to the MCS seeking clarification in respect of "what provision of law that [the MCS had] purported to undertake such drastic action against [the Claimant] without having given [him] a prior opportunity to be heard". The Claimant wrote to the MCS again on 5 November 2014 seeking clarity on the grounds for the suspension of his privileges as an independent specialist working at the Hospital. In that letter, the Claimant attached a response to his handling of the cases discussed at that meeting, including the one mentioned above. The Claimant "reiterate[d] that [he] made a mistake in the assessment of this case" but that the "same thing happened to the two doctors in the case [to which he referred in his letter] as they were fooled by the pseudocyesis even though they had 20 years of experience". The MCS replied to the Claimant on 18 November 2014 noting that the matter had already been referred to the Permanent Secretary and that it was currently before the Medical Board.

[8] The Medical Board wrote to the Claimant on 7 October 2014 stating that it concurred with the decision to suspend the Claimant's operating room privileges and again on 17 November 2014 clarifying that it concurred with the decision to suspend all of the Claimant's privileges as an independent medical practitioner within the public sector. These two letters will be examined in more detail below. The Medical Board via letter dated 26 November 2014 invited the Claimant to a meeting on 28 November 2014 to discuss allegations of serious professional misconduct. In that letter, the Medical Board states that it is authorized to consider allegations of serious misconduct involving a registered medical practitioner and that "misconduct or disgraceful conduct is taken to mean behavior inconsistent with or deviating from that expected of a healthcare professional in, but not limited to, the line of duty". In the letter, the Medical Board also informed the Claimant that the allegations are on record in a personal file bearing his name and that they pertain to incidents of medical and surgical error documented since June 2013 by the MCS. The specific allegations were then outlined to the Claimant referencing associated page numbers in the files to which the specific allegation refers as follows: (1) seeking to perform, and actually performing procedures that are not indicated by diagnostic evidence (cases in pages 25-29); (2) incompetence or negligence in relation to physical examination, diagnosis, surgical technique and post-operative care (cases in pages 11-15, 21, 71-73); (3) false reporting in the course of corresponding or consulting with a medical or nursing colleague (case in page 3-7); (4) falsely claiming to have performed a procedure (case in pages 7-15); and (5) abandoning or neglecting a patient in need of immediate care (cases in pages 21,43). The letter concludes that the Claimant had the opportunity to view his personnel file and that he responded to the MCS on 5 November 2014 and that this action signaled the Claimant's awareness of the allegations, the associated cases containing the evidence, the proceedings of disciplinary meetings and the imposed administrative-level sanctions.

[9] The Claimant replied to the Medical Board the next day on 27 November 2014 expressing his availability to attend the meeting with the Medical Board. The Claimant stated further that he was under the impression that the purpose of the

meeting was to discuss his formal response dated 5 November 2014 to the present allegations of serious professional misconduct. The Claimant also noted that he would only be prepared to discuss the allegations leveled against him in 2014. In addition, the Claimant requested additional time to prepare his response to the allegations in the letter from the Medical Board because he would need time to request permission from the MCS to review the files and to coordinate with the medical records personnel to have access to the files after they have been located.

[10] At the meeting held on 28 November 2014, the Claimant, first, produced a statement of protest that he read at the meeting before the Medical Board; and second, informed the Medical Board that he wished to have an opportunity to retain counsel to answer the allegations and reiterated that the allegations against him lacked precision and clarity. On 28 November 2014, the Claimant wrote the Chief Medical Officer (the "**CMO**"), as Chair of the Medical Board, attaching the statement that he read at the meeting held with the Medical Board of the same date.

[11] Subsequent to the meeting, the Chair of the Medical Board on 2 December 2014 wrote the Minister a letter captioned "**Re: Disciplinary Proceedings – Dr. Dail Crawford**". In that letter, the Medical Board informed the Minister that pursuant to section 17 of the Medical Act and consequent upon the allegations of professional misconduct referred to it by the Permanent Secretary, the Medical Board met in special session and that the sole agenda item was the matter at caption. It was stated that the meeting was aborted after the Claimant prepared a statement in which he argued: (1) there was no due process; (2) the allegations were not properly put to him; and (3) the allegations were the result of personal vendetta. The Medical Board informed the Minister that the Claimant stated that he would need two to three weeks to consult a lawyer and respond to the allegations of misconduct. The Medical Board therefore sought the intervention of the Minister pursuant to section 19 of the Medical Act to retain its own legal counsel, indicating that the next steps were as follows: (1) referral to the Legal Department via the

Office of the Permanent Secretary; (2) case preparation; (3) re-filing of the allegations to the Claimant; and (4) setting a date for disciplinary proceedings. The Minister on 4 December 2014 approved the referral of the matter to the Legal Department.

[12] On 19 December 2014 the CMO, who is also Chair of the Medical Board, wrote the Permanent Secretary informing of his receipt of a minute from the Director of Community Based Health Services in respect of the Claimant's poor performance in community health centres. The CMO was of the view that there was compelling evidence that the Claimant was not prepared to comply with procedures. Consequently, the CMO recommended the Claimant's immediate suspension of duty in the public service. The CMO further recommended the convening of a meeting of administrative heads of services to: (1) affirm the recommended administrative level adverse action, namely suspension; (2) consider the merits of dismissal from the public service; (3) initiate the recruitment of an Obstetrician/Gynecologist; and (4) collect and collate additional acts of professional misconduct for referral of the same to the Medical Board for regulatory level adverse action. The Permanent Secretary wrote to the Chief Personnel Officer on 28 December 2014 and extended the Claimant's suspension to Community Based Health Services to protect the safety of patients and clients of the Ministry. In that letter, the Permanent Secretary also agreed with the recommendation of the CMO to suspend the Claimant from the public service.

[13] The Medical Board wrote the Claimant on 19 November 2015 in respect of a sick leave certificate he issued to a patient, noting that a review of the Medical Register did not reveal any documentation of the Claimant having been granted registration and licensure to engage in independent general practice. The Medical Board therefore invited the Claimant to respond. The Claimant replied on 17 December 2015 requesting: (1) an outline of any violation as it related to his medical practice; (2) if there was any violation, that he be given some guidance for its resolution; and (3) that he be provided with a copy of the letter contesting the sick leave certificate bearing his signature. The Medical Board replied to the Claimant on 28

December 2015, indicating that the Medical Board met on 16 December 2015 and decided against pursuing the matter. The letter continued that all doctors are registered as medical practitioners and not according to a subcategory as generalist or specialist, concluding that a medical practitioner who is neither examined nor certified to practise independently as a generalist is not expressly prevented from engaging in such practice.

[14] The Medical Board wrote to the Claimant on 22 February 2016 to review and respond to a specific allegation of professional misconduct attaching a copy of the report, and indicated that the Medical Board would meet in the next "three to four weeks" to consider the allegation. The Claimant replied on 1 March 2016, requesting a date for the meeting to enable him to seek counsel. The Claimant also responded on 22 March 2016 to the report or complaint, which was attached to the letter to him from the Medical Board dated 22 February 2016.

[15] On 25 February 2015, the Claimant received a letter from the Chief Personnel Officer informing him that the Governor General had approved the recommendation of the Public Service Commission that he be suspended on half pay with effect from 9 March 2015. It was also stated that this decision is pending the Medical Board's guidance and completion of their investigation into allegations of professional Carter J in **Crawford v Medical Board of Saint Christopher and Nevis et al** (Claim No. SKBHCV 2015/0189 dated 27 November 2017) quashed the decision to suspend the Claimant on half pay.

[16] The MCS wrote the Medical Board on 2 February 2016 about another incident referred to him by the Director of Institution-Based Nursing Services, attaching the letter from the Director to the MCS dated 29 January 2016. The Director of Institution-Based Nursing Services also wrote to the MCS on 29 July 2014, 18 June 2015, 17 May 2016 and 16 November 2017 in relation to patient management of the Claimant. The MCS wrote the CMO as chair of the Medical Board on 17 March 2017 in respect of further complaints about the Claimant, attaching a letter to him from Dr. Rohan Nariani dated 15 March 2017. The MCS again wrote the CMO as chair of the Medical Board on 16 November 2018 about

mismanagement of patients by the Claimant, attaching a letter to him from Dr. Rohan Nariani dated 13 November 2018.

Judicial Review Proceedings

[17] The Claimant via amended Fixed Date Claim filed on 19 October 2018 applied for judicial review, following leave granted to him by Lanns J. (Ag.) on 22 August 2018. The Claimant seeks the following reliefs:

1. An Order of Certiorari to quash a decision of the 1st Defendant to ratify/ and uphold the decision of the second Defendant to suspend the Claimant: (i) from operating room privileges as an Obstetrician/Gynaecologist ("OB/GYN"); and (ii) from all privileges of and as an independent medical practitioner in Saint Christopher and Nevis;

2. An Order of Certiorari quashing the decision of the 2nd Defendant to suspend the Claimant from operating room privileges as an OB/GYN and from all privileges of and as an independent medical practitioner in Saint Christopher and Nevis;

3. A Declaration that the 1st Defendant was in breach of its statutory duties pursuant to sections 17 and 18 of the Medical Act Cap 9.15 of the Laws of Saint Christopher and Nevis by:

    i. Failing to lawfully exercise its discretion to hold or to determine whether to hold disciplinary proceedings in accordance with Section 17(1) of the Act;

    ii. Further or in the alternative, failing to provide the Claimant with an opportunity to be heard pursuant to section 18(1) of the Act with respect to disciplinary proceedings;

    iii. Ratifying a decision of the 2nd Defendant dated September 12 2014 purporting to suspend the Claimant under section 17 of the Act, such ratification effected by letters from the 1st Defendant dated October 7th and November 17 2014; and

    iv. Further or in the alternative, ratifying a decision to suspend the Claimant indefinitely and for a period exceeding one year;

4. A Declaration that the 2nd Defendant acted ultra vires and in contravention of section 5 of the Institution Based Health Services (Management) Regulations ("IBHS), 2002;

5. A Declaration that the 1st and 2nd Defendants acted in contravention of section 55 of the IBHS Regulations by causing patients of the Applicant to be unlawfully denied the choice as to their physician;

6. A Declaration that the Claimant meets the criteria to be issued with a Certificate of Good Standing as a OB/GYN in the Federation of Saint Christopher and Nevis;

7. A Declaration that the Claimant meets the fit and proper criteria for privileges as an OB/GYN in the Federation of Saint Christopher and Nevis and operating room privileges at the Joseph N. France Hospital;

8. Damages;

9. Costs;

10. That all necessary and consequential directions be given.

11. Any other relief as deemed necessary by this Honourable Court.

[18] The issues which arise for determination are as follows: (1) whether the Second Defendant made any of the decisions about which the Claimant complains; (2) whether the First Defendant "ratified" or "upheld" any decision of the Second Defendant and whether in so doing the First Defendant acted contrary to sections 17 and 18 of the Medical Act (3) whether, in the alternative, the EMC or the Ministry breached the Claimant's right to natural justice; (4) whether the First Defendant's failure to hold a disciplinary hearing under section 17 of the Medical Act, or to provide the Claimant an opportunity to be heard under section 18 of the Medical Act, is unlawful; (5) whether the Second Defendant breached Regulations 5 and 55 of the IBHS (M) Regulations; (6) whether the Claimant is entitled to a declaration that he meets the criteria to be issued with a Certificate of Good Standing as an OB/GYN in Saint Christopher and Nevis; and (7) whether the Claimant is entitled to a declaration that he meets the fit and proper criteria for privileges as an OB/GYN in Saint Christopher and Nevis and operating room privileges at the Hospital.

1. Suspension of Privileges - The Decision Maker

[19] The Claimant seeks an order of *certiorari* to quash the decision of the Second Defendant to suspend the Claimant from: (1) operating room privileges as an

OB/GYN; and (2) from all privileges of and as an independent medical practitioner in Saint Christopher and Nevis. The Claimant in the first and second orders that he seeks mischaracterizes the decision of the Ministry to suspend his privileges as an independent specialist *working at the Hospital* as a suspension of "all privileges of and as an independent *medical practitioner in Saint Christopher and Nevis*" (emphasis added). The Claimant's suspension related to his privileges as an independent specialist working at the Hospital; it was not related to any privileges as an independent medical practitioner in Saint Christopher and Nevis. The Claimant continued to be able to practice as a medical practitioner after the suspension of his privileges by the Ministry, and is still a registered medical practitioner in Saint Christopher and Nevis.

[20] Section 25 of the Institution Based Health Services (Management) Act CAP 9.12 of the Laws of Saint Christopher and Nevis (the "**IBHS (M) Act**") outlines the functions of the EMC as follows:

> **25. Functions of the Committee**
>
> The Committee shall
>
> (a) consider from time to time the functioning, efficiency and improvement of the medical, surgical and allied services at any institution from the point of view of the patient and clinical and support services;
>
> (b) make recommendations to the Authority the action to be taken in respect to any of the above matters;
>
> (c) cause to be prepared the annual estimate of revenue and expenditure of institutions;
>
> (d) recommend, develop and update strategic long-range plans to support the institutions' philosophy and goals;
>
> (e) recommend the institutions' policy positions regarding administrative and legislative matters;
>
> (f) coordinate with the Ministry, heads of departments in the monitoring of activities to ensure the fulfilment of the community's needs for quality health care;
>
> (g) advise the Minister on the recruitment, development, evaluation and retention of the administrative and professional staff; and

(h) develop, upgrade and implement human resource policies and practices including the selection, promotion or discharge of administrative, support and ancillary staff.

[21] Section 24 of the IBHS (M) Act provides for the establishment of the EMC as follows:

> **24. Executive Management Committee**
>
> (1) There is established a committee to be known as the Executive Management Committee (hereinafter referred to as the Committee).
>
> (2) The Committee shall consist of
>
> (a) the Director as Chairperson;
>
> (b) the Medical Chief of Staff;
>
> (c) the Director of Institution-Based Nursing Services;
>
> (d) the Operations Manager; and
>
> (e) such other medical and allied health officers on the staff which the Chairperson, in the circumstances prevailing in any department of medicine, surgery and allied services in the Hospital, may see fit to summon to attend.
>
> (3) The Committee shall meet at least twice per month but the Director may summon a meeting of the Committee at any time when he or she thinks it necessary so to do.

[22] The question that arises is whether the Second Defendant made any of the decisions as claimed by the Claimant. In the Claimant's affidavit in support of his application for judicial review, the Claimant avers that the decision to suspend his operating room privileges as an OBGYN was taken at the EMC Meeting (at [11]) and that the Second Defendant used "the EMC meeting" to hurt him before his peers (at [10]). The Claimant also avers that he received a letter from the MCS dated 24 June 2013 "confirming the decision of the **2nd Defendant/EMC** and setting out the conditions of [his] suspension and evaluation" [at [11] (emphasis added)). The six-month suspension of the Claimant's operating room privileges commenced in or 21 June 2013 and ended on 22 December 2013.

[23] The letter dated 24 June 2013 from the MCS specifically refers to the EMC Meeting and the decisions taken at that meeting. The minutes of the meeting were provided and the persons who attended were those who were entitled to attend

pursuant to section 24 of the IBHS (M) Act. The Claimant has not provided any evidence to suggest that the meeting that took place on 21 June 2013 was not a meeting of the EMC. The evidence suggests that it was and I so find.

[24] As stated above, the MCS in that 12 September 2014 letter to the Permanent Secretary states that a meeting was called by the EMC to discuss some recent problem surrounding the Claimant's case management. The MCS then provides a list of the persons who attended that meeting. The Claimant submits that that meeting was not an EMC meeting at all. Although the MCS states that the meeting was that of the EMC, the evidence does not support that statement. Unlike the EMC Meeting, there were no minutes taken and importantly section 24 of the IBHS (M) Act specifically provides for the establishment of the EMC and for the persons who comprise the EMC. At that alleged EMC meeting, none of the following persons were in attendance: (1) the Director of the Director of Institution Based Health Services (the "**IBHS**") as Chairperson; (2) the Director of Institution-Based Nursing Services; or (3) the Operations Manager. There were other persons in attendance at the meeting but it is not clear whether they were in attendance with the permission of the Chairman. Section 24(2)(d) of the IBHS (M) Act allows for other medical and allied health officers on the staff to be part of an EMC meeting but they must be persons who the Chairperson, in the circumstances prevailing in any department of medicine, surgery and allied services in the Hospital, may see fit to summon to attend. There is no evidence that the Chairman as Director of the IBHS attended the MCS Meeting let alone anyone else that the Chairman might have summoned to attend.

[25] The only EMC member at that second meeting was the MCS. In fact, when the Permanent Secretary replied on 15 September 2014 to the MCS's letter he stated that he was "sanctioning the **actions taken by the Medical Chief of Staff** in the interest of the general public" (emphasis added). In addition, the Permanent Secretary wrote to the Medical Board on 19 November 2014 stating "you are advised that the Ministry of Health is in full support of the **Medical Chief of Staff's decision** to suspend privileges as Consultant Obstetrician Gynecologist to [the

Claimant] … (emphasis added)." I therefore find that the meeting that took place on 12 September 2014 was not a meeting of the EMC but a meeting called by the MCS.

[26] The evidence is clear that the Second Defendant did not make any of the decisions about which the Claimant complains and that the decision to suspend the Claimant's operating room privileges as an OB/GYN was made by the EMC at the EMC Meeting. The Ministry took the second decision when it ratified, upheld and continued the suspension of the Claimant's privileges as an independent specialist working at the Hospital. What the MCS did at the MCS Meeting was to suspend the Claimant's privileges as an independent specialist working at the Hospital immediately pending further word from the Permanent Secretary and input from the Medical Board. This was a temporary measure that lasted only three days when the Ministry ratified it on 15 September 2014. The details of what took place at that meeting is outlined in a letter from the MCS to the Permanent Secretary dated 12 September 2014 and will be examined in more detail later in this judgment.

[27] In **Causwell v The General Legal Council, ex parte Elizabeth Hartley** [2019] UKPC 9 (dated 11 March 2019), the Privy Council accepted the general principle of agency as stated by the editors of Bowstead & Reynolds on Agency, 21st Ed, (2018) (at para 2–047):

> Where an act is done purportedly in the name or on behalf of another by a person who has no actual authority to do that act, the person in whose name or on whose behalf the act is done may, if the third party had believed the act to be authorised, by ratifying the act, make it as valid and effectual…as if it had been originally done by his authority, whether the person doing the act was an agent exceeding his authority, or was a person having no authority to act for him at all.

[28] The Claimant has not challenged the decision of the Ministry to ratify the decision of the MCS to suspend his privileges as an independent specialist working at the Hospital. The Ministry ratified the decision of the MCS. This ratification it valid and effectual as if it had been originally done on the authority of the Ministry. Once the Ministry ratified the decision of the MCS, there cannot be any basis to suggest that

the MCS acted unlawfully since any such ratification operated to validate the decision from the point in time when it was originally made by the MCS.

[29] The Claimant submits that the MCS has no power to suspend the privileges of a medical practitioner even if the suspension of privileges was an interim measure pending the decision of the Ministry. The decision taken at the MCS Meeting to suspend the privileges of the Claimant was simply an interim measure since it was taken pending further word from the Permanent Secretary in the Ministry and input from the Medical Board. The Permanent Secretary on behalf of the Ministry ratified the decision taken by the MCS and referred the matter to the Medical Board. The Claimant also submits that there is no statutory regime for the revocation of privileges of a medical practitioner. That is correct but there is no statutory basis to grant privileges either. The lack of a statutory basis to revoke such privileges does not assist the Claimant since the ultimate decision on whether to suspend or revoke the privileges granted to a medical practitioner rests with the Ministry. Implicit in the power to grant privileges to medical practitioners at the Hospital must be the power to revoke those privileges.

[30] The Governor General pursuant to section 18 of the IBHS (M) Act appoints the MCS. Section 18 provides that the MCS shall be responsible for the clinical administration of all health institutions and shall perform such duties as prescribed by the regulations made under the IBHS (M) Act. The Institution Based Health Services (Management) Regulations 2002 (the "**IBHS (M) Regulations**") were made under the IBHS (M) Act. Regulation 4 states that:

> 4. **ROLE OF THE MEDICAL CHIEF OF STAFF**: The Medical Chief of Staff shall:
>
> (a) be responsible for planning, organizing and evaluating professional services of the medical staff and the allied health staff;
>
> (b) report to the Chief Medical Officer on the matters pertaining to the maintenance of professional services of the medical staff and the allied health staff; and
>
> (c) as a member of the Executive Management Committee, collaborate with the Director of Institution Based Health Services and the Director of Institution Nursing Services to ensure the delivery of the

highest possible professional services by the medical staff and the allied health staff.

5. **DUTIES OF THE MEDICAL CHIEF OF STAFF**: The Medical Chief of Staff shall

(a) be responsible for the coordination and management of medical services in accordance with institutional, governmental and other regulatory and professional standards

(b) coordinate with Medical Staff Departmental Heads in developing policies, programmes and procedures to ensure the delivery of quality medical services;

(c) establish medical and allied health staff committees to effectively discharge the functions of the medical and allied health staff, and administration;

(d) be responsible for recommending to the Executive Management Committee merit increases, promotions and disciplinary actions.

[31] The MCS avers that in his capacity as MCS of the Hospital he has supervisory control of the physician staff. The Claimant does not challenge this evidence of the MCS. In any event, even if this does not strictly fall under the remit of the MCS under either Regulations 4 or 5, it can be accepted that *de facto* that function is now part of the functions of the MCS as stated in the unchallenged evidence of the affidavit of the MCS. As one can imagine, decisions at the Hospital need to be made on a daily basis and with some urgency; surely some of these decisions cannot wait for a meeting of the EMC to be convened by the Director of the IBHS or decision of the Ministry that might arguably take some time. In any event, the ultimate decision in respect of privileges at the Hospital rested with the Ministry, which ultimately decided as it did. I therefore find that the MCS in the circumstances of this case, under his general powers of management of the staff of medical and surgical practitioners at the Hospital and in the interests of public safety, had the power to decide as an interim measure to suspend the Claimant's privileges as an independent specialist working in the Hospital. In any event, this matters little since the Privy Council in **Causwell** stated that the principles relating to ratification apply whether the person doing the act was an agent exceeding his authority, or was a person having no authority to act for him at all. However, the basis of the suspension of the Claimant's privileges rested not with the MCS but

with the Ministry that ratified and upheld, 3 days later, the decision of the MCS taken on 12 September 2014. The decision of the Ministry must therefore date from 12 September 2014, rending nugatory any argument relating to the powers of the MCS to suspend the Claimant's privileges as an independent specialist working at the Hospital.

[32] The Claimant has not challenged: (1) the decision of the EMC made at the EMC Meeting to suspend his operating room privileges as an OB/GYN; or (2) the subsequent decision of the Ministry to ratify and continue the suspension of the Claimant's privileges as an independent specialist working in the Hospital. The Claimant is not entitled to the second order that he seeks because: (1) the Second Defendant is not the decision maker in respect of the suspension of the Claimant's operating room privileges; and (2) although the MCS suspended as an interim measure (lasting three days) the Claimant's privileges as an independent specialist working in the Hospital, the basis upon which the suspension of the Claimant's privileges rests, is the decision of the Ministry to ratify and uphold the decision of the MCS.

2. The Medical Board and the Suspension of Privileges

[33] In his Fixed Date Claim filed on 6 September 2018, the Claimant originally sought an order of *certiorari* to quash a decision of the First Defendant to ratify or uphold a decision to suspend the Claimant: (i) from operating room privileges as an Obstetrician/Gynaecologist ("OB/GYN"); and (ii) from all privileges of and as an independent medical practitioner in Saint Christopher and Nevis. On 19 October 2019, the Claimant amended his Fixed Date Claim so rather than refer to "a decision of the 1st Defendant to ratify/ uphold a decision to suspend the Claimant", the Fixed Date Claim now refers to "a decision of the 1st Defendant to ratify~~/~~ and uphold ~~a~~ the decision of the second Defendant to suspend the Claimant". Based on my finding above that the Second Defendant did not make any of the decisions about which the Claimant complains, the reference by the Claimant in the first order that he seeks to the "decision of the **second Defendant**" (emphasis added) is fatal to his request for this order. Since the Second Defendant did not make any

decision about which the Claimant can properly complain there is no decision of the Second Defendant that the First Defendant could ratify or uphold. Moreover, the purported ratification took place after 15 September 2014 by which time the Ministry had intervened and had actually ratified the decision of the MCS taken on 12 September 2014. There was no decision of the MCS for the First Defendant to ratify or uphold. The Claimant is therefore not entitled to the first order that he seeks. This naturally would end the matter. However, I will proceed to consider the question of the purported ratification by the First Defendant for completeness.

[34] The Permanent Secretary wrote the Medical Board on 24 June 2013 in respect of the EMC Meeting and the decisions taken in respect of the Claimant. The letter notes that a file that was received by the Minister of Health (the "**Minister**") was "being forwarded to you [as chairman of the Medical Board] for a formal hearing and recommendation from the Medical Board". The Medical Board replied on 8 July 2013 indicating that it did not see any reference to the Claimant being offered the opportunity to respond to the charges and the measures proposed and applied, noting further that such documentation is needed to complete the record. The Medical Board decided to defer the request for a formal hearing because "administrative sanctions including a 6-month probationary period have been applied". I have grave doubts as to whether this justification is sufficient for the Medical Board to abdicate its responsibility to investigate allegations of serious professional misconduct pursuant to sections 17 and 18 of the Medical Act.

[35] The Permanent Secretary via letter dated 18 August 2014 again referred the matter to the Medical Board. The Medical Board responded on 20 August 2014 noting that: first, the Medical Board is not an administrative level committee of the Ministry or one of its departments; and second, referrals to the Medical Board "must be of extra-ordinary concern because a decision is potentially career-changing/terminating – a matter of utmost seriousness". The Medical Board made various suggestions including referral to the Medical Board "on the basis of a clear and present danger to life and limb posed by the doctor evidence by a single episode or patter of practice error and/or professional misconduct". The Minister,

who was copied to the Medical Board's response, noted on 21 August 2014 on the letter that she would strongly advise the CMO to refer the matter to the Medical Board first, because an administrative body must be guided by technical advice.

[36] The Medical Board in a letter dated 7 October 2014 to the Minister noted, among other things, that there was sufficient and compelling evidence to justify the decision of the EMC to suspend the Claimant's operating room privileges and that it "concurs with the decision". The Medical Board also noted that, given the nature of the allegations against the Claimant, he should be given another opportunity to respond to the allegations.

[37] In a letter dated 7 October 2014, the Medical Board wrote to the Claimant about the allegations of professional misconduct that were made against him by the EMC. The Claimant was informed that the Medical Board was of the unanimous view that the allegations were serious and that the Medical Board concurred with the decision to suspend his operating room privileges. He was informed of his right to due process and was also informed that the files were available for his review and that he should contact Ms. Vivette Brownbill's office in the Ministry for access to the files. In a subsequent letter to the Claimant dated 17 November 2014, the Medical Board informed the Claimant that it concurs with the decision to suspend all his privileges of an independent medical practitioner within the public sector and that its previous correspondence spoke to operating room privileges only.

[38] The Permanent Secretary on 19 November 2014 wrote the CMO, as chair of the Medical Board, noting that, based on the types and number of complaints, he was "bewildered as to why these matters have not been addressed by your office with a stronger sense of urgency". In addition, the Permanent Secretary directed the CMO "to take this matter to the Medical Board on the grounds of professional misconduct of a serious nature for their collective input and guidance as to the way forward".

[39] The issue was whether the decision of the Medical Board to "concur" with the suspension of the Claimant's: (1) operating room privileges by the EMC; and (2) privileges as an independent specialist working in the Hospital by the Ministry

breached sections 17 and 18 of the Medical Act CAP 9.15 of the Laws of Saint Christopher and Nevis (the "**Medical Act**").

[40] Sections 17 and 18 of the Medical Act provide as follows:

> **17. Erasing from Medical Register name of person convicted of crime or disgraceful conduct.**
>
> (1) Any person registered under this Act
>
> (a) who is convicted
>
> (i) of an offence outside the State, which if committed in the State would be punishable on indictment; or
>
> (ii) of such an offence in the State; or
>
> (b) who is alleged to have committed serious professional misconduct,
>
> shall be subject to disciplinary proceedings.
>
> (2) Where, in any proceedings referred to in subsection (1), the Board is satisfied that such a person,
>
> (a) has been convicted of an offence under subparagraph (i) or (ii) of paragraph (a) of subsection (1); or
>
> (b) has been guilty of serious professional misconduct,
>
> the Board may,
>
> (i) censure him or her;
>
> (ii) direct the suspension of his or her registration for a period not exceeding one year; or
>
> (iii) direct the Registrar to remove his or her name from the Medical Register.
>
> (3) Where the name of any person registered under this Act is removed or erased from the Medical Register, any Certificate of Registration issued to such person shall be deemed to be cancelled.
>
> **18. Provisions relating to disciplinary proceedings.**
>
> (1) In any disciplinary proceedings referred to in subsections (1) and (2) of section 17 for the purpose of determining whether a person registered under this Act has been guilty of serious professional misconduct, the Minister may, at the request of the Board, appoint a judicial assessor and (where necessary) retain counsel, to assist the Board, and in any such disciplinary proceedings the complainant (if any)

and the person against whom serious professional misconduct is alleged shall be entitled to be heard and may be represented by counsel.

(2) The Minister may make rules prescribing the procedure to be followed with respect to the institution and conduct of disciplinary proceedings under section 17.

[41] Section 17 of the Medical Act provides for two methods by which the name of a registered medical practitioner shall be erased from the medical register by the Registrar on direction from the Medical Board. The first is following disciplinary proceedings if the Medical Board is satisfied that the registered medical practitioner has been convicted: (a) of an offence outside the State, which if committed in the State would be punishable on indictment; or (b) of such an offence in the State. The second is following disciplinary proceedings if the Medical Board is satisfied that the registered medical practitioner is guilty of serious professional misconduct. Section 18(1) provides for the appointment of a judicial assessor to assist the Medical Board in determining whether the registered medical practitioner is guilty of serious professional misconduct. It also states that the person against whom serious professional misconduct is alleged shall be entitled to be heard and may be represented by counsel. However, section 18(2) provides that the Minister may make rules prescribing the procedure to be followed with respect to the institution and conduct of disciplinary proceedings under section 17. The court is not aware of any rules made by the Minister pursuant to section 18(2).

[42] The powers of the Medical Board are specifically provided for in sections 17 and 18 of the Medical Act. Following disciplinary proceedings where a registered medical practitioner is heard and may be represented by counsel, if the Medical Board is satisfied that the registered medical practitioner is guilty of serious professional misconduct, the Medical Board is given the power under section 17(2)(b) to: (i) censure him or her; (ii) direct the suspension of his or her registration for a period not exceeding one year; or (iii) direct the Registrar to remove his or her name from the Medical Register. The Medical Board may only issue those forms of punishments found in section 17(2)(b) following a decision

made at the end of disciplinary proceedings that a registered medical practitioner is guilty of serious professional misconduct.

[43] There is a clear distinction to be made between, on the one hand, the decision of the Medical Board to "concur" with the decision of the EMC to suspend the Claimant's operating room privileges and decision of the Ministry to suspend the Claimant's privileges as an independent specialist working at the Hospital; and, on the other hand, the manner in which the Medical Board is to deal with the complaint of professional misconduct of the Claimant made by the Minister to the Medical Board. The decisions of the EMC and the Ministry were based on what they essentially claimed to be: (1) a legitimate issue about the competence of the Claimant as an OB/GYN or medical practitioner; and (2) the need to act to ensure the safety of the Claimant's patients. Their reasons formed the basis of the complaint by the Minister to the Medical Board. The mandate of the Medical Board on receipt of any complaint is to determine whether that registered medical practitioner: (1) has been convicted: (a) of an offence outside the State, which if committed in the State would be punishable on indictment; or (b) of such an offence in the State; or (2) is guilty of serious professional misconduct. If either of these are found to exist, the Medical Board may impose one or more of the sanctions set out in section 17(2)(b) after conducting disciplinary proceeding at which the medical practitioner is afforded a fair hearing and is heard.

[44] The Medical Board has made no decision to remove the Claimant from the Medical Register following any disciplinary proceedings brought against the Claimant. The grant, suspension or removal of operating room privileges of medical practitioners rests with the administrators of the Hospital and the grant, suspension or removal of privileges of medical practitioners at the Hospital rests ultimately with the Ministry. By concurring with both decisions, the Medical Board is not acting pursuant to a power granted to it under the Medical Act. Moreover, there are no such penalties under the Medical Act that the Medical Board can impose on a registered medical practitioner, and in any event no disciplinary proceedings have been held pursuant to section 17 of the Medical Act.

[45] By concurring with the decision of the EMC and the Ministry, the Medical Board can be seen to be impermissibly commenting on a matter that was not yet subject to any disciplinary proceedings in accordance with section 17 of the Medical Act. In the 7 October 2014 letter sent by the Medical Board to the Claimant, it was stated that the Medical Board "was unanimous of the view that the allegations are serious" and then it concurred with the decision to suspend the Claimant's operating room privileges. However, the decisions of the Medical Board to concur with the suspension of the Claimant's operating room privileges and the suspension of his privileges as an independent specialist working at the Hospital have no consequences in law. It addition, that decision was not the basis upon which the original or continued suspension of the Claimant's privileges as an independent specialist working in the Hospital rests. The Concise Oxford Dictionary (9th Edn 1995) defines the word "concur" as including to "agree in opinion" and to "express agreement". Neither of these definitions comes close to the verb "to ratify" which means to "confirm or accept (an agreement made in one's name) by formal consent, signature, etc". In addition, the Medical Board is simply not the relevant decision maker in respect of the suspension of the Claimant's operating room or other privileges. Therefore, since the Medical Board did not decide anything and did not have the statutory power or authority to make any decision concerning the privileges, whether operating room or otherwise, of any medical practitioner working at the Hospital there can be no basis to grant the declarations sought by the Claimant at paragraphs 3(iii) and 3(iv) of the reliefs claimed in his Fixed Date Claim.

[46] The Medical Board is reminded of its remit only to consider matters that are referred to it as stipulated by the Medical Act and nothing else. I disagree with the recommendation of the then Minister in her note dated 21 August 2014 to the CMO that the CMO must first refer the matter to the Medical Board because an administrative body must be guided by technical advice. That is not the function of the Medical Board. Matters that do not fall within its remit under the Medical Act should not be considered by it and if such matters are brought to its attention, the Medical Board should refrain from commenting thereon. It should advise the

persons concerned about the procedure for complaints to be made to it in respect of a registered medical practitioner, and should refrain from making observations in any way on any matter that has been brought to its attention. In any event, the Medical Board should not be providing any opinion on, or concurring with, any decision made by any body in respect of a registered medical practitioner. The Medical Board has jurisdiction, among other things, to consider allegations of serious professional misconduct, to commence disciplinary proceedings against any registered medical practitioner in respect of such misconduct, and if found guilty to impose the penalties outlined in section 17(2)(b) of the Medical Act.

3. Natural Justice and the Suspension of Privileges

[47] Since the Claimant did not challenge, first, the decision of the EMC to suspend his operating room privileges for six months, second, the decision of the Ministry to ratify that latter decision, it is not strictly necessary for the court to determine whether the EMC or the Ministry were justified in the decisions they made. As stated above, I am of the view that having regard to the broad nature of the powers granted to, and role of, the MCS under Regulation 4 and 5 of the IBHS (M) Regulations, the MCS would have in any event been empowered to suspend, as a temporary measure, the Claimant's privileges as an independent specialist working at the Hospital pending word from the Ministry. The EMC would also have been entitled pursuant to the broad powers conferred upon it by section 24 of the IBHS (M) Act to make the decisions it made to which reference have already been made above.

[48] I will nonetheless consider this issue briefly since the parties have filed submissions on this point. In respect of the six-month suspension of his operating room privileges, the Claimant submits that there was, first, no prior notice formal or otherwise to indicate to the Claimant that he would be subject to a disciplinary hearing into matters touching and concerning his performance; and, second, no indication that the Claimant would be subject to possible decisions or sanctions that would impact his ability or eligibility to practice as a medical doctor.

[49] The Claimant cites in support the decision of **Rosenhek v Windsor Regional Hospital**, 2010 ONCA 13, [2010] O.J. No. 129, 184 A.C.W.S. (3d) 581, 257 O.A.C. 283. In **Rosenhek**, the appellant, a cardiologist, enjoyed privileges at Windsor Regional Hospital (the "**WR Hospital**") where he was employed. He was unable to gain entry to a coverage group to which other internists at the WR Hospital belonged. Two months into the three-month renewal of his privileges, the board of the WR Hospital revoked the appellant's privileges effective immediately and he was required to leave hospital at once. The appellant brought an action against the respondent alleging that it acted in bad faith in summarily revoking his privileges at the WR Hospital that effectively ended his ability to work there. The trial judge held that the board acted in bad faith in terminating the appellant's privileges for a minor problem and for which the appellant was only partially responsible. The trial judge also held that the respondent was liable in damages for breach of the duty of good faith and the tort of intentional interference with economic relations.

[50] On appeal, the Court of Appeal of Ontario, in dismissing the appeal by the WR Hospital, stated that:

> The timing and manner of the Board's decision to revoke Dr. Rosenhek's privileges also informs the bad faith finding. The privileges were revoked in March 1989, when Dr. Rosenhek had a month remaining on those privileges. His privileges had been renewed only two months earlier. There is nothing in the record to suggest that anything had changed between January, when the Board renewed those privileges, and March, when it revoked them. This about-face appears arbitrary and entirely unwarranted given that **there was never any legitimate issue about Dr. Rosenhek's competence as a physician or the need to act to ensure the safety of his patients.** (Emphasis added)

[51] While the decision in **Rosenhek** bears some similarity to the instant case, the manner in which the appellant's privileges were revoked in **Rosenhek** was unlike the instant case where there was a pattern of instances where the Claimant's competence as a physician or OBGYN was arguably at issue. In addition, the Claimant continued to function as a Junior Doctor in the Hospital under the supervision of Dr. Coca during the six-month period of the suspension of his

operating room privileges. This is unlike the case in **Rosenhek** where the appellant could not continue working at the WR Hospital as a result of the revocation of his privileges. Although the Ministry ratified the decision of the MCS to suspend the Claimant's privileges as an independent specialist working at the Hospital on the basis that it was "in the interest of the general public", the Claimant continued to be employed at the Hospital.

[52] In his affidavit filed in support of his application for judicial review, the Claimant does not provide any detailed explanation for the many cases mentioned in the affidavit of the MCS and other affidavits filed on behalf of the Respondents. Indeed in the notes of the EMC Meeting the Claimant stated, among other things, that: (1) he was a young man who had just returned from medical school and that he knows that he needs to listen; (2) he thinks he has been trying his best and he knows that there are shortcomings but that he wants to do his best and that his plan is to be the best OBGYN in Saint Kitts; and (3) he needs the help of others. The Claimant in his affidavit in response to the affidavits of the respondents does not take issue with any of the details of the cases mentioned in the affidavit of the MCS.

[53] The evidence of the MCS provides incontrovertible evidence that the decision to suspend the operating room privileges of the Claimant was a temporary measure that was to last for six months. At the EMC Meeting, the Claimant seemingly agreed that his performance as an OBGYN was not perfect and that he needed guidance and training. The decision taken by the EMC to suspend his operating room privileges must be looked at within the context of the need to provide necessary guidance to the Claimant under the tutelage of Dr. Coca for a period of six months to observe and evaluate his performance during that time. Dr. Coca was to write a report at the end of the period to determine if the Claimant had made any progress and improvement. In all the circumstances I do not see this measure as punitive requiring the application of the rules of natural justice since it was developmental. The evidence suggests that the Claimant accepted that this was developmental in nature. It was not a disciplinary meeting as alleged by the

Claimant; there was no sanction imposed on the Claimant and his ability to practice as a medical practitioner at the Hospital was affected only in a marginal way while he was under the six month period of observation and evaluation.

[54] The decision of the MCS immediately to suspend the Claimant's privileges as an independent specialist working at the Hospital was taken at the MCS Meeting. I will simply mention only one case (Case 11) for emphasis and to appreciate the nature of and rationale for the decision that the MCS took at that meeting. The following is taken from the affidavit of the MCS. The patient was admitted to Dr. Crawford on the 3 September 2014. He examined the patient and documented on three separate occasions and on three separate days a fundal height of 30cm, a fetal heartbeat of 142 -144, fetal movement and cephalic presentation. An ultrasound was later done and showed a normal size uterus and no gestational sac (no sign of pregnancy). The MCS identified the following problems with this case: (1) any obstetrician should be able to differentiate between a 30cm uterus and a normal 6cm uterus; (2) Dr. Crawford was documenting a fetal heart, fetal movements and a fetal head when the patient was not pregnant; and (3) the issues identified at 1 and 2 above showed complete incompetence on the part of the obstetrician. The MCS also noted that: (1) Dr. Jeffers, an obstetrician, indicated that this was unforgivable and the diagnosis could have been made by a simple history, physical exam and pregnancy test; and (2) Dr. Coca indicated that a simple physical exam would have shown that the patient was not 30 weeks pregnant. In response to this case and others mentioned at the meeting the MCS notes that the Claimant merely indicated that he had nothing to say other than he was willing to learn from his mistakes. The Claimant in his letter to the MCS dated 5 November 2014 provided some explanation for the cases discussed at that meeting including the one just discussed, reiterating that he made a mistake in the assessment of that case.

[55] The rationale for the immediate suspension of the privileges of the Claimant as an independent specialist working at the Hospital by the MCS which was later ratified by the Ministry was outlined in the affidavit of the MCS as follows:

29. At that meeting I indicated to Dr. Crawford that in his short stay at the hospital he had had numerous complications many of which would have resulted in him being fired from many institutions. He was told that he had been dishonest in a number of his cases in terms of documentation and that he has not shown that level of competence expected of a Specialist. It was indicated to him that we in the Ministry of Health had an obligation to protect the public and deliver the highest possible health care in a safe environment.

[56] It will be remembered that, in relation to the revocation of privileges of the appellant in **Rosenhek**, the Court of Appeal of Ontario stated:

> His privileges had been renewed only two months earlier. There is nothing in the record to suggest that anything had changed between January, when the Board renewed those privileges, and March, when it revoked them. This about-face appears arbitrary and entirely unwarranted given that **there was never any legitimate issue about Dr. Rosenhek's competence as a physician or the need to act to ensure the safety of his patients.** (Emphasis added)

[57] There is no doubt that the affidavit evidence of the Respondents in this matter shows that there was a serious legitimate issue about the Claimant's competence as an OB/GYN and in light of the new cases mentioned at the MCS Meeting there was a need to act swiftly to ensure the safety of the Claimant's patients and future patients at the Hospital. The evidence of the Defendants is that the EMC and the Ministry acted out of concern for the welfare of the patients and the quality and standard of care that is provided by the Hospital. It is the uncontroverted and uncontroversial evidence of the Defendants that the field of speciality in which the Claimant practices requires significant competence properly to perform as there are two lives at stake, namely, that of the unborn baby and that of the mother, both of whom need to be protected. The MCS in his affidavit evidence summarises as follows:

> 111. The allegations made against the Claimant are of such a nature that should the Claimant return to JNF without these matters being resolved, this will serve to undermine the public's confidence in the healthcare system in St. Kitts and Nevis and place members of the public at risk of suffering harm. Further the Claimant's return to JNF without a resolution of these matters will cause negatively impact the administration of the public health system as it would call into question the Health Administration's ability to take decisive action to ensure the safety of the public in cases

> where life and limb may be in danger of suffering injury or harm and death may occur and will have a negative impact on moral of the medical staff. some of the Medical Staff have indicated that they do not see how they can continue to work with him without his receiving the necessary training to bring him up to the competence required.

[58] The decision of the Court of Appeal in Ontario in **Rosenhek** recognised that the rules of natural justice can be displaced if there was: (1) any legitimate issue about the competence of the medical practitioner as a physician; or (2) the need to act to ensure the safety of his patients. Unfortunately, in this case, both exceptions apply to justify the immediate suspension of the Claimant's privileges as an independent specialist working at the Hospital and the subsequent ratification and continuation of that decision by the Ministry.

[59] In any event, the Claimant received two clear days notice of the meeting and had an opportunity to address the MCS Meeting on the concerns raised even though he did not get notice of all the matters that were actually discussed at the MCS Meeting. I agree with the Defendants that the Claimant was given *some* hearing, had notice of at least *one* matter that was to be discussed at the meeting, and at that meeting had *an opportunit*y to address the concerns raised. So unlike the case of Ontario in **Rosenhek** where the appellant was not afforded a hearing at all, the Claimant in the case at bar was afforded some hearing, and given the need for urgency and the need to act as swiftly as possible, the MCS and ultimately the Ministry were entitled to have made their decisions without giving the Claimant a full opportunity to be heard. The Claimant, therefore, cannot now complain that the opportunity he had to be heard was insufficient when in the circumstances of this case he was not entitled to any.

4. Complaints of Professional Misconduct

[60] The Claimant also seeks a declaration that the Medical Board was in breach of its statutory duties pursuant to sections 17 and 18 of the Medical Act by: (i) failing to lawfully exercise its discretion to hold or to determine whether to hold disciplinary proceedings in accordance with section 17(1) of the Act; and (ii) further or in the

alternative, failing to provide the Claimant with an opportunity to be heard pursuant to section 18(1) of the Act with respect to disciplinary proceedings.

[61] The Minister made a complaint to the Medical Board alleging serious professional misconduct against the Claimant. The Medical Board wrote to the Claimant on 7 October 2014, stating as follows:

> The Board was informed that you are aware of your right to due process. The Board is prepared to consider your version of events and requests that you respond without delay to the allegations. The file containing the allegations is available for your reference. Please contact Ms. Vivette Brownbill's office in the Ministry of Health by October 17th 2014

[62] The letter states that: (1) the Medical Board is prepared to consider the Claimant's version of events; (2) the Claimant was to respond without delay to the allegations; (3) the file containing the allegation is available for the Claimant's reference; and (4) the Claimant should contact Ms. Vivette Brownbill's office in the Ministry. In that letter, the Medical Board notes that the Minister "requested and received advice from the Medical Board … on the matter of allegations of professional misconduct" which were made against the Claimant. In that 7 October 2014 letter, the Medical Board does not specify the allegations of professional misconduct to which the Claimant was invited to respond without delay. There is also no timeline within which the Claimant had to respond to the allegations. There is further no indication of whether the Medical Board had decided to initiate disciplinary proceedings pursuant to section 17 of the Medical Act based on the allegations it received.

[63] The Claimant submits that the Medical Board failed to give adequate and or proper notice of the charges leveled against him, because in the 7 October 2014 letter to the Claimant the Medical Board notes that the Claimant was aware of his right to due process and that the file containing the allegations was "available for [the Claimant's] reference". I agree with the Claimant that the letter of 7 October 2014 cannot be regarded as providing sufficient details of the charges or allegations of serious professional misconduct leveled against the Claimant. The letter did not in any event indicate a date for any disciplinary proceedings to be held or mention that any disciplinary proceedings pursuant to section 17 of the Medical Act were to

be held. The Medical Board in its letter to the Claimant dated 7 October 2014 did not adhere to the elementary principles of procedural fairness and natural justice.

[64] The Claimant has not yet responded formally to the allegations outlined in the letter to him from the Medical Board dated 26 November 2014. To date the Claimant has not heard further from the Medical Board in relation to its 22 February 2016 letter. The letter to the Claimant from the Medical Board on 26 November 2014 inviting him to a "meeting" a mere two days later was also inadequate. In my view, that letter properly provided the Claimant with the allegations and they are sufficiently particularized to enable the Claimant to know the allegations of serious professional misconduct made against him. Two issues however remain, first, it was not immediately clear whether the "meeting" to which the Medical Board invited the Claimant to attend was a disciplinary proceeding or hearing contemplated by section 17 of the Medical Act; and, second, the time period of two days was wholly inadequate for the Claimant to prepare to respond to the allegations outlined in the letter from the Medical Board.

[65] The Claimant alleges that the Medical Board has either: (1) failed lawfully to exercise its discretion to hold or determine whether to hold disciplinary proceedings pursuant to section 17(1) of the Medical Act; or (2) failed to provide the Claimant with an opportunity to be heard pursuant to section 18(1) of the Medical Act with respect to disciplinary proceedings. To date, the Medical Board has not communicated to the Claimant the commencement of disciplinary proceedings against him as contemplated by section 17 of the Medical Act. While the 26 November 2014 letter informed the Claimant that pursuant to the Medical Act, the Medical Board is authorized to consider allegations of serious professional misconduct involving a registered medical practitioner, that letter does not in specific terms inform him of the nature of the meeting to which he was invited to attend in only 48 hours.

[66] In addition, the letter did not state specifically that disciplinary proceedings against the Claimant has been initiated by the Medical Board pursuant to section 17 of the Medical Act in respect of the allegations of serious professional misconducted

made against the Claimant as outlined in the letter. The evidence suggests that the Medical Board intended the meeting on 28 November 2014 to be a disciplinary proceeding in accordance with sections 17 and 18 of the Medical Act. It will be remembered that the Medical Board on 2 December 2014 wrote the Minister a letter captioned "**Re: Disciplinary Proceedings – Dr. Dail Crawford**". This provides cogent evidence that the Medical Board intended that meeting to be a disciplinary proceeding, notwithstanding the clear breaches of natural justice identified above, particularly the fact that the Claimant was never informed that that meeting was intended to be a disciplinary proceeding purportedly in accordance with sections 17 and 18 and of the Medical Act.

[67] The Claimant submits that that the Medical Board has failed and or refused to convene any disciplinary proceedings to resolve the matter of the allegations despite the fact that the allegations of serious professional misconduct continue to hang over the Claimant's head and were the subject of the suspension of his privileges. The Claimant adds that the Medical Board has failed and or refused to resolve these matters. The Claimant further submits that the Medical Board as a body charged to determine the matter of serious professional misconduct, has ignored the allegations made in late 2014 and continued to engage the Claimant on other matters with alarming consistency, while refusing to resolve these issues. The Claimant argues that the Medical Board has acted in bad faith in rushing to place on record allegations against the Claimant over the years while avoiding any resolution of these matters. The Claimant further argues that meetings are continually scheduled but not take place, while the allegations against the Claimant remain without resolution.

[68] The Claimant also submits that it is clear and apparent that the open and public actions of the Medical Board are tantamount to a public inquisition of the Claimant without the administrative will to make a determination on the matters of serious professional misconduct. The Claimant argues that the Medical Board had a statutory duty to complete the process of a hearing to determine the truth of the allegations. By failing and or refusing to complete this process, the Claimant

submits that the Medical Board created an environment where: (1) the Claimant's privileges were indefinitely suspended severely crippling his skills, competence and ability to practice; (2) upholding a decision by the MCS that was bad in law and unfair; (3) the Claimant's professional reputation would remain in a perpetual state of doubt, harm and loss without a resolution by the body with the remit to find the truth of the allegations; and (4) abdicating its role to the MCS to inquire into serious professional misconduct by a practitioner.

[69] No authority is needed for the elementary principle that the Claimant must be provided with the full particulars of charges against him and be given an opportunity to be heard. The letter from the Medical Board to the Claimant on 26 November 2014 provides sufficiently those particulars to the Claimant. However, it is over four years since the Medical Board sent that letter to the Claimant and, to date, no disciplinary proceedings against the Claimant have commenced; neither has the Claimant been informed of the commencement of any such proceedings. I therefore accept that the Medical Board has failed in its statutory duty to hold disciplinary proceedings in respect of the Claimant under section 17 of the Medical Act, the claimant being a person who is alleged to have committed serious professional misconduct.

[70] The Medical Act does not provide any timelines within which the Medical Board must either determine whether to initiate disciplinary proceedings or hold disciplinary proceedings if the Medical Board is of the opinion that they are warranted in light of the allegations made against a registered medical practitioner. However, it must be the case that the Medical Board must conduct its obligations under sections 17 and 18 within a reasonable time. What is a reasonable time is based on the circumstances of any particular case.

[71] In **R v Secretary of State for the Home Department Ex p. Doody** [1994] 1 A.C. 531, the House of Lords opined that:

> What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that

> (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.

[72] No doubt any disciplinary proceedings that might be held must be fair. The Claimant cannot continue to have the allegation of serious professional misconduct hanging over his head indefinitely. Given the period of time that has elapsed, the Medical Board must as a matter of urgency decide whether to commence disciplinary proceedings to enable the Claimant to have a decision one way or the other. If the Medical Board decides to proceed with disciplinary proceedings, it should communicate this in writing to the Claimant, providing him with the details of the allegations of serious professional misconduct and all the evidence that it has to support these allegations. Simply referring the Claimant to his file found in the Ministry is patently inadequate. The Medical Board must also provide the Claimant with a reasonable time to respond to the allegations and inform him of his right to retain counsel if necessary. The Claimant must also be informed of the time, date and location of any such disciplinary proceeding. Moreover, the Medical Board must commence the disciplinary proceedings as a matter of urgency and conclude as soon as is practical thereafter. If the Medical Board decides not to commence disciplinary proceedings, it must inform the Claimant of its decision in writing as soon as possible.

5. Institution Based Health Services Regulations

[73] The Claimant submits that, first, the Second Defendant acted *ultra vires* and in contravention of Regulation 5 of the IBHS (M) Regulations; and, second, the First and Second Defendants acted in contravention of Regulation 55 of the Regulations by causing the Claimant's patients to be unlawfully denied the choice as to their physician. For reasons, which have been explored above, and outlined again below, these issues, do not strictly arise for consideration. However, they will be addressed for completeness.

[74] Regulation 55(g) of the IBHS (M) Regulations states that every patient has a right to the choice of his or her physician and if possible his or her treatment. I agree with the Respondents' submission that the IBHS (M) Regulations outlines the duties of medical and allied personnel but does not accord medical practitioners any rights. The rights outlined in Regulation 55 of the IBHS (M) Regulations are accorded to the patient and are for the benefit of the patient. Consequently, I therefore hold that the Claimant has no standing to bring a claim seeking such a declaration.

[75] Regulation 5 of the IBHS (M) Regulations states as follows:

> **5. DUTIES OF THE MEDICAL CHIEF OF STAFF**: The Medical Chief of Staff shall
>
> (a) be responsible for the coordination and management of medical services in accordance with institutional, governmental and other regulatory and professional standards
>
> (b) coordinate with Medical Staff Departmental Heads in developing policies, programmes and procedures to ensure the delivery of quality medical services;
>
> (c) establish medical and allied health staff committees to effectively discharge the functions of the medical and allied health staff, and administration;
>
> (d) be responsible for recommending to the Executive Management Committee merit increases, promotions and disciplinary actions.

[76] The Claimant alleges that the Second Defendant breached Regulation 5 of the IBHS (M) Regulations because the Claimant was suspended by the MCS on at least two occasions, the second occasion being the most impactful, and the first

causing the Claimant to serve a period of observation under a supervising doctor. As was stated earlier, it was the EMC that suspended the Claimant's operating room privileges and placed him under the supervision of Dr. Coca for six months; and it was the Ministry that suspended the Claimant's privileges as an independent specialist working in the Hospital. Since the First Defendant and the Second Defendants did not make these decisions, the Claimant is not entitled to the fourth and fifth orders that he seeks.

6. The Application for a Certificate of Good Standing

[77] The Claimant wrote a letter to the CMO on 11 November 2016 requesting a certificate of good standing as a Gynecologist Obstetrician. The Claimant submits that if the court were to find that there is no effective order of suspension, the court may grant an order for the issuance of a Certificate of Good Standing, having regard to the aggravating features of this case and the conduct of the Defendants, and the gravity of the allegations and the damage incurred by the Claimant. The court having found that there is a lawful suspension by the Ministry of the Claimant's privileges as an independent specialist working in the Hospital, the Claimant is not, based on the premises he accepts for such a grant, entitled to any such order.

[78] The CMO avers that the Certificate of Good Standing that is normally issued by the Ministry requires her to certify that the medical practitioner "was never disqualified, suspended or prohibited from practicing medicine in the Federation and that the Board is not aware of any matters that called into question his/her good standing". The first requires evidence that the Claimant was never disqualified, suspended or prohibited from practicing medicine in Saint Christopher and Nevis. The second requires evidence that the Medical Board is not aware of any matters that called into question the medical practitioner's good standing. Both limbs must be satisfied before the Certificate of Good Standing can be issued. The CMO states that if the court were to grant the declarations sought by the Claimant it would be to "basically to ask the Medical Board and the CMO to ignore all the

complaints which has been brought to its attention and issue the Certificate of Good Standing".

[79] The CMO states that her refusal to issue the Certificate of Good Standing to the Claimant is not linked to the suspension of privileges but rather to the complaints, which have been received by the Medical Board. Therefore, the evidence of the CMO shows that the Medical Board is aware of matters that calls into question the Claimant's good standing. The decision of the CMO to refuse to issue the Certificate of Good Standing to the Claimant is therefore lawful.

[80] Since the issue of the Certificate of Good Standing to the Claimant is linked to the allegations of serious professional misconduct made to the Medical Board against him, as stated above, the Claimant is entitled to a determination by the Medical Board on this issue as a matter of urgency. The Medical Board must decide whether to initiate disciplinary proceedings against the Claimant, and if it so decides to complete the proceedings as soon is reasonably practical after commencement.

7. Privileges - A Fit and Proper Person

[81] The Claimant has not provided any evidence for the final order that he seeks, namely, that he meets the fit and proper criteria for privileges as an OB/GYN in Saint Christopher and Nevis and operating room privileges at the Hospital. That is a matter for the Ministry and the EMC, not for this court. As mentioned earlier, the Claimant did not challenge the decision of the EMC to suspend his operating room privileges for six months at the EMC Meeting or the initial decision of the MCS taken at the MCS Meeting to suspend his privileges as an independent specialist working at the Hospital and the decision of the Ministry to ratify and continue that suspension. In light of that serious omission, the Claimant cannot now seek a declaration that he is entitled to operating room privileges at the Hospital and to privileges as an independent specialist working at the Hospital. These are decisions for the EMC and the Ministry to make. There is therefore no basis on which the court can grant the seventh declaration that the Claimant seeks in his Amended Fixed Date Claim.

Disposition

[82] For the reasons explained above, I make the following orders:

(1) With the exception of relief 3(i), the Claimant is not entitled to any of the orders that he seeks in his Fixed Date Claim.

(2) The Claimant is entitled to a Declaration that the First Defendant is in breach of its statutory duties under sections 17 and 18 of the Medical Act for failing lawfully to exercise its discretion to hold or determine whether to hold disciplinary proceedings against the Claimant.

(3) No order as to costs.

Eddy D. Ventose
High Court Judge

By the Court

Registrar