

Describing and Analysing the Disciplinary and Investigative functions of the Medical Council of Malta.

SARAH PISANI

This article by **Sarah Pisani** was previously submitted as part of MCT2001 and is being published with the author's permission. The aim of this piece of work is to describe, explain, as well as critically analyse the disciplinary and investigative functions of the Medical Council of Malta. It provides an introduction of the regulatory body of the Medical Council and the relevant sources of legislation which afford such disciplinary and investigative functions to the Medical Council of Malta. Then continues by showcasing such legislative powers which the Medical Council enjoys through Medical Council Inquiries investigated by the Medical Council itself, as well as through several Court Judgements decided by the Courts of Malta.

TAGS: Health Care Professions Act, Medical Council of Malta

Sarah Pisani has recently completed her Bachelor of Laws (LL.B. Hons.) and is now pursuing a Master of Notarial Studies, driven by her passion towards becoming a Notary Public. Through her studies, she is refining her expertise in notarial law, with a focus on providing accurate and ethical notarial services in the future.

1. The Medical Council

The Medical Council of Malta (MCM) is the regulatory body for the registration and regulation of Doctors and Dentists in Malta, whose offices are situated in the former St. Luke's Hospital, completely independent of any other department situated in said building.¹ It is an autonomous body that is composed through the application of Article 9 of Chapter 464 of the Laws of Malta, the Health Care Professions Act (HCPA).

2. The Functions of the Medical Council of Malta

The Medical Council (MC)'s main legislative functions are embedded in Article 10 of the HCPA, which abides by the EU Directive 2005/36/EC,² hence being entrusted with the investigation of issues and the taking of disciplinary measures by virtue of Articles 10(1)(b), 10(1)(d), 10(1)(f), 10(1)(h), 10(1)(i), and 10(1)(k). Article 10(4) of the HCPA states that, 'the Medical Council shall publish an annual activity report...containing a statement of the activities carried out or pursued by the Council during the year,'³ which include both complaints and inquiries as well as court cases.

3. The Investigative and Disciplinary Functions of the Medical Council of Malta

Articles 31 and 32 of the HCPA make reference to certain specific authoritative abilities which the Council has, stating that:

*the relevant Council shall have the power, either on the complaint of any person or of its own motion, to investigate any allegation of professional misconduct or breach of ethics by a health care professional falling under its supervision.*⁴

and that, 'if after due inquiry, the relevant Council has found that a healthcare professional falling under its authority...has been guilty of professional or ethical misconduct in any respect'⁵ or 'in any other manner has failed to abide by the professional and ethical standards applicable to him,'⁶ then the relevant Council may employ any one or more of the disciplinary measures listed under paragraphs (i) to (v). Moreover, Article 33 of the HCPA holds that:

¹ Medical Council, < <https://medicalcouncil.gov.mt/en/the-council/our-mission/> > accessed 3 January 2022.

² Medical Council, < <https://medicalcouncil.gov.mt/en/contact/> > accessed 4 January 2022.

³ The Health Care Professions Act, Chapter 464 of the Laws of Malta, Article 10 (4)

⁴ *ibid*, Article 31(1).

⁵ *ibid*, Article 32(1)(b).

⁶ *ibid*, Article 32(1)(c).

any inquiry held by a relevant Council shall be without prejudice to any other criminal, civil, administrative or disciplinary proceedings which may be taken against the person concerned under the provisions of any other law.⁷

In addition, other legislation which affords certain functions to the MC emerges from Legal Notices and Subsidiary Legislation enacted under the Health Care Professions Act, such as Subsidiary Legislation 464.17 and Subsidiary Legislation 458.08.

In Medical Inquiry **MC/D/310/2007**,⁸ the Criminal Court found a medical practitioner guilty of drug abuse and the case was referred to the MC by virtue of Article 32 of the HCPA. An inquiry by the MC commenced and Dr Richard Coleiro was found responsible for breaching professional ethical behaviour. The decision was delivered on the 28th of May 2008 and the MC decided to remove his name from the Medical Register for six months. Moreover, before this term ended, every three months for five years from the 28th of May, Dr Coleiro had to provide the MC with two medical certificates from competent specialists confirming that he is fit to perform his profession. Dr Coleiro complied with that which was asked of him and on the 28th of November 2008 he was eventually reinstated on the Medical Register. In her dissertation on this particular issue, Dr Debono comments that:

the sanction given to the medical practitioner is intended to give him an incentive to control his addiction and to be in a position to practice safely his profession. A sanction which incentivises the practitioner to seek specialist help.⁹

In **MC/14/2007**,¹⁰ a complaint was filed about Dr Adrian Vassallo, accusing him of issuing medical certificates to a minor without her parents' consent. On the 12th of February 2008, the MC inquired and once it concluded its investigation, Dr Vassallo was found guilty of failing to conform with the medical professional standards and ethics as stipulated in the HCPA and was therefore given a warning in writing.

In the Court of Appeal case **Dr Frank Portelli vs Kunsill Mediku**,¹¹ the MC had investigated a complaint filed by Dr Louis Buhagiar against Dr Frank Portelli for alleged unethical and unprofessional behaviour. The decision of the MC took place on the 1st of July 2009, where it was established that Dr Portelli was guilty of professional misconduct and was therefore fined the sum of ten thousand euros, which had to be paid within three months, or else

⁷ *ibid*, Article 33

⁸ **MC/D/310/2007**, Medical Council Malta, Annual Report 2008

⁹ Ilona Debono, 'Fitness to Practise Legislation in the Medical and Dental Profession – A Comparative Study' (LL.D Thesis, University of Malta 2016) p. 81.

¹⁰ **MC/14/2007**, Medical Council Malta, Annual Report 2008.

¹¹ 18/2009 **Dr Frank Portelli vs Kunsill Mediku**, Court of Appeal (Civil Inferior) 27 April 2010.

he would be struck off the Register. Dr Portelli filed an appeal against the MC, where although the Court conceded that:

l-appellant jissottmetti illi l-Kunsill ma seta` qatt jiddeciedi hu akkuza ta' malafama, peress illi r-rimedji f'kaz illi persuna jhoss illi soffra malafama jinsabu quddiem il-Qrati Ċivili u Kriminali tal-pajjiż – u għalhekk li "l-akkuza miġjuba kontra l-appellant kienet waħda ta' malafama" ma setgħet qatt tigi deciza mill-Kunsill,¹²

it did not entertain Dr Portelli's requests and his appeal was turned down by a decision in favour of the MC.

In the First Hall of the Civil Court case filed by Dr Frank Portelli¹³, the MC objected to and contested all the allegations made by Dr Portelli. The Court stated that:

l-Kunsill Mediku naqas milli jtemm l-inkjesta fil-perjodu ta' sentejn (Artikolu 31(4) tal-Kap. 464 tal-Liġijiet ta' Malta) u għalhekk wara li għadda tali terminu l- Kunsill Mediku ma kellux l-awtorità li jagħti decizjoni fl-inkjesta. Decizjoni li meta ngħatat fl-1 ta' Lulju 2009 kienet ultra vires.¹⁴

The First Court decided in favour of Dr Portelli based on the fact that the MC took over two years to determine the case. Therefore, since the MC failed to conclude the investigation within the time frame set forth by law,¹⁵ the MC had no power to declare its decision. The Court expressed that the decision delivered by the MC on 1st July 2009 was ultra vires and did not assent to the submitted position of the MC.

The MC appealed the decision on the 15th of May 2014 and referred to the evidence produced before the Court, including such causes which created the delay in the process, and proceeded to ask the Court of Appeal to determine and decide that the length of time over two years was occasional and through no fault of the MC.¹⁶ Moreover, the MC also asked the Appellate Court to revoke the decision of the First Hall of the Civil Court. However, the Court of Appeal confirmed the judgment of the First Court,¹⁷ stating that:

il-Qorti...sabet li l-Kunsill Mediku naqas li jtemm inkjesta fil-konfront tal-attur fi żmien sentejn kif irid l-artikolu 31(4) tal-Kapitolu 464 tal-Liġijiet ta' Malta, u għalhekk meta l-Kunsill ta d-decizjoni tiegħu fl-1 ta' Lulju, 2009, dan kien ultra vires is-setgħat tiegħu li, dwar l-istess inkjesta, ntemmu hekk kif għaddew is-sentejn

¹² ibid, p. 25.

¹³ 1100/2009 *Dr Frank Portelli M.D., FRDC vs. Dr Josella Farrugia noe. et.*, First Hall Civil Court, 25 April 2014.

¹⁴ ibid, p.13.

¹⁵ HCPA (n 3) Article 31(4).

¹⁶ ibid, Article 31(4).

¹⁷ 1100/2009 *Dr Frank Portelli M.D., FRDC vs. Dr Josella Farrugia noe. et.*, First Hall Civil Court, 25th April 2014.

as it had found no reason to amend the conclusion of the first court, thereby dismissing the appeal filed by the MC as well as that filed by Dr Portelli.

In the case ***Dr Johanna Van't Verlaat vs Medical Council***,¹⁹ a patient complained against Dr Van't Verlaat, a neurosurgeon, who had failed to attend the operating theatre while the patient was already under anaesthesia. This operation involved two surgeons, as "the facts of the case refer to an intended combined medical operation consisting of...an orthopaedic intervention, and ...a neurosurgical intervention."²⁰ The MC investigated this case, and after due inquiry, it concluded that Dr Van't Verlaat had behaved in an unethical and unprofessional manner, in turn imposing a suspension of three months as well as a fine of ten thousand euros.

Article 2 of the HCPA defines the term 'professional and ethical standards' as:

*standards relating to the general conduct of a member of a health care profession, including the behaviour of such member towards his client or the patient under his care or being attended by him, during or consequential to the exercise of his profession, and the behaviour of such member towards other members of his profession and towards members of other health care professions and towards society.*²¹

The MC's vital function of prescribing and maintaining professional and ethical standards for the medical and dental profession further mandates that in the practice of their role, such practitioners are subject to special supervision by the MC.

Dr Van't Verlaat initiated a case before the First Hall of the Civil Court to nullify the decision taken by the MC. However, her request was dismissed by the First Hall of the Civil Court through an independent delivery on the 29th of May 2012. The Court rejected and dismissed the demands of the plaintiff as filed and contained in her sworn application dated 30th September 2009.²² Towards the end of 2012, Dr Van't Verlaat filed an appeal, and on the 28th of April 2017, the Court of Appeal delivered its judgment, revoking the appealed judgment of the First Hall Civil Court of the 29th of May 2012:

in the sense that it rejects the defendant Council's preliminary plea as to the Court's lack of jurisdiction and orders the acts of the case be remitted to the First Hall of the Civil Court, so that the plaintiff's

¹⁸ *ibid*, p. 1-2.

¹⁹ 948/2009 *Van't Verlaat Johanna vs Kunsill Mediku Malti*, First Hall Civil Court, 29 of May 2012

²⁰ *ibid*, p. 1.

²¹ HCPA (n 3), Article 2

²² *Van't Verlaat Johanna* (n 19) p. 19.

*claims be decided in the light of the above considerations and in terms of the law.*²³

The Court of Appeal had also stated that:

*the ordinary courts' duty in such cases should only entail a review of the decision, in the sense that an appraisal should be made of the procedures held before the Council, to confirm that it acted within the powers conferred to it by law, and an assessment be made whether the Council acted in accordance with the principles of natural justice, and whether the decision is a reasonable one and gives a correct interpretation of the applicable law. The review by the First Court should ultimately lead to a decision as to whether there are sufficient grounds to quash the contested decision by the Medical Council, in which case the proceedings would then be remitted to the Council, for it to reassess the complaint in the light of the Court's decision. However, it would then ultimately be up to the Medical Council to take the disciplinary decision as to the complaint regarding the appellant, in terms of the law.*²⁴

The MC viewed Dr Van't Verlaat's behaviour as violating Regulation 5 of Schedule A of Subsidiary Legislation 464.17, because 'a doctor shall by his conduct and in all matters set a high standard,'²⁵ and Regulation 6 (iv) of the General Notice for the Guidance of Practitioners,²⁶ as her behaviour reflected a 'gross or prolonged neglect of duties and disregard of personal responsibilities to the patients, to clients and to the public'. Additionally, Articles 32(1)(b) and (c) of the HCPA further provide that since the healthcare professional who fell under the authority of such Council 'has been guilty of professional or ethical misconduct,' and has 'failed to abide by the professional and ethical standards applicable to him',²⁷ the MC acted within the powers conferred to it by Article 32 of the HCPA, as in this case it had the power to 'direct any one or more of the measures'. Finally, the MC concluded that a suspension no longer affects the doctor as she is now retired, and a sentence cannot be negotiated, thereby continuing to defend its decision taken in 2009.²⁸

In the 2009 case of ***Dr Louis Buhagiar vs Medical Council***,²⁹ a family who had previously complained to the MC in 2008, furnished new evidence against Dr Buhagiar. The MC, after assessing these allegations, decided that this case qualified for an inquiry for alleged unethical and unprofessional behaviour. Therefore, Dr Buhagiar had to respond to the accusations

²³ *ibid*, p. 8.

²⁴ *ibid*, p. 8.

²⁵ Ethics of the Medical Profession Regulations, 464.17, Regulation 5 Schedule A.

²⁶ Medical Council Malta, General Notice for the Guidance of Practitioners, Regulation 6

²⁷ HCPA (n 3), Article 32

²⁸ Medical Council Malta Annual Report 2018 published by Medical Council Malta, p. 36.

²⁹ 1043/12JRM *Dr Louis Buhagiar vs Kunsill Mediku Malti*, First Hall Civil Court 9 July 2020

mentioned in Regulation 6(iv) of the General Notice for the Guidance of Practitioners.³⁰

The MC delivered its decision on 27th June 2012, where Dr Buhagiar was found guilty of the accusations set against him. Although the complainants were present, Dr Buhagiar had failed to attend and was instead sent a copy of the MC's decision by mail, which stated that he was found guilty of unprofessional conduct and was to be suspended from the Register for one month, along with this he was liable to a fine of five thousand euros. On the 26th of September 2012, Dr Buhagiar filed a judicial letter and the MC's legal advisor filed the MC's reply in Court on the 5th of October 2012, which Dr Buhagiar contested in the Maltese Civil Courts.

After hearing the evidence of both parties and declaring such stage as closed, the Court stated that:

il-Qorti...ma tidholx fil-mertu tad-deċiżjoni li tkun ħaddnet awtorità sakemm fit-twettiq tal-proċess li jwassal għal dik id-deċiżjoni, l-awtorità ma timxix lil hinn mis-setgħat mogħtija lilha mil-liġi.³¹

and it continued by stressing that:

illi fil-fehma tal-Qorti, ma kien hemm xejn fil-liġi li jzomm lill-Kunsill milli, wara li jkun kostitwit kif imiss, jeżamina ilment kemm-il darba ma jkunux għaddew aktar minn sentejn minn meta l-kwerelant sar jaf jew messu sar jaf bil-fatti jew incidenti li taw lok għall-ilment, u f'kull każ mhux aktar tard minn għaxar snin minn meta ġara l-incident (Article 32(2) of Chapter 464 of the Laws of Malta). Il-liġi fil-fatt ma tagħrafx bejn għamla ta' ilment u ieħor: għall-kuntrarju, tqiegħed fuq ir-Registratur tal-Kunsill (ir-Registratur) l-obbligu li jressaq l-ilment lill-President tal-Kunsill u li jinnotifika l-ilment lill-prattikant konċernat u jistiednu biex jissottometti l-verżjoni tiegħu għax-xiljiet imressqa fl-ilment (Regulation 4 of the Medical Council (erasure of names procedure) Regulations (S.L. 458.08)).³²

Il-Qorti tasal għall-fehma li l-Kunsill mexxa mal-proċedura stabbilita fil-liġi u ħarisha b'reqqa³³...ma tara xejn li jista' jistona jew jitqies mhux raġonevoli f'dik id-deċiżjoni. Hemm ukoll motivazzjoni kongruwa li turi għaliex il-Kunsill wasal għal dik id-deċiżjoni.³⁴

In another case, the MC held an inquiry to investigate a complaint regarding alleged unethical and unprofessional conduct concerning Dr Franco Mercieca, as it was decided that his behaviour was in breach of

³⁰ Medical Council Malta, General Notice for the Guidance of Practitioners, Regulation 6

³¹ *ibid*, p. 8.

³² *Dr Louis Buhagiar* (n 29) p. 8.

³³ *ibid*, p. 9.

³⁴ *ibid*, p. 13.

Regulation 5 of Schedule A of Subsidiary Legislation 464.17.³⁵ The case exposed a situation where Dr Mercieca failed to consider ‘past medical history prior to starting the treatment, take radiographs, inform the patient beforehand regarding the costs involved, and abide by the patient’s consent regarding local anaesthetic’.³⁶

The decision was delivered by the MC on the 19th of May 2010 where Dr Mercieca was found guilty of professional and ethical misconduct in terms of Articles 32(1)(b) and (c) of the HCPA and,³⁷ as a result, was ordered a temporary suspension of two months from its Registers. Dr Mercieca contested the decision of the MC in the names ***Dr Franco Mercieca vs Kunsill Mediku***,³⁸ and on the 28th of March 2014, the Court of Appeal decided in favour of the MC, on the basis that:

kieku l-ligi riedet tagħti appell minn kull deċiżjoni kienet tgħid dan fl-ewwel subartikolu tal- artikolu 36 billi fih tagħti dritt ta’ appell b’mod ġenerali u mingħajr terminu għall-avviż u ttipproċedi biex tidderoga jew tirrestringi r-regola ġenerali tas-subartikolu (1) billi tgħaddi biex tistipula terminu għall-avviż f’każ ta’ kancellament. Minflok, jidher li fl-ewwel sub- artikolu, kif normalment isir, għet puntwalizzata l-materja partikolari tal-artikolu u cioe d- deċiżjoni ta’ kancellament, u mbagħad hemm numru ta’ subartikoli li jlaboraw u jkomplu jippreċiżaw fuq l-istess materja puntwalizzata flewwel sub-artikolu. Għalhekk l-artikolu 36 kollu jipprovdi biss għal deċiżjoni ta’ kancellament u għalhekk l-appell hu provdut biss minn tali deċiżjoni u mhux minn deċiżjonijiet ta’ xorta oħra.³⁹

The same reasoning was also adopted in the cases ***Dr Adam Bartolo vs Kunsill Mediku, decided by the Court of Appeal*** on the 14th of October 2016,⁴⁰ and ***Tabib Dr Mario Saliba vs Il- Kunsill Mediku, decided by the Court of Appeal***, on the 10th of August 2020.⁴¹

Article 38 of the HCPA also falls under the title ‘Disciplinary action, offences and erasure of names’ and it states that:

if after due inquiry, a relevant Council finds that any health care professional is unfit to continue to practise his profession on account of some physical or mental infirmity, the respective Council shall order that his name be erased from the appropriate register.⁴²

However if after due inquiry, the MC “is satisfied that the health care

³⁵ Ethics of the Medical Profession Regulations, 464.17, Regulation 5 Schedule A

³⁶ Medical Council Malta Annual Report 2018 published by Medical Council Malta, p. 35.

³⁷ HCPA (n 3), Article 32

³⁸ 146/2010/1 *Dr Franco Mercieca vs Kunsill Mediku Malti*, Court of Appeal 28 March 2014.

³⁹ *Dr Franco Mercieca* (n 38) p. 6-7.

⁴⁰ 12/2014AE *Dr Adam Bartolo vs Kunsill Mediku*, Court of Appeal (Inferior) 14 October 2016

⁴¹ 277/19/2 *Tabib Dr Mario Saliba vs Il-Kunsill Mediku*, Court of Appeal 10 August 2020

⁴² HCPA (n 3), Article 38(1).

professional concerned is no longer unfit to continue to practise his profession, reinstate that health care professional with immediate effect".⁴³The application of Article 38 suggests the safeguarding of both the patient and the professional⁴⁴, as the condition which a practitioner may be affected by also affects their practice and good standards. Therefore, if such condition is not diagnosed or the practitioner involved is aware of it and fails to disclose it, it is possible that if a case ensues, it would be judged under Article 32 of the HCPA, which regulates disciplinary action arising from grounds of 'convictions and infamous conduct'.⁴⁵

4. Conclusion

The investigative and disciplinary functions assigned to the MC by law are necessary, as they help prescribe and maintain professional and ethical standards for the Medical and Dental professions. As expressed in the mission statement given by the MC:

*The Medical Council aims to safeguard the patients' rights and safety by protecting, promoting and maintaining the health of the general public, by ensuring proper standards in the practice of Medicine, as well as by safeguarding the values and integrity of the Medical and Dental professions.*⁴⁶

⁴³ *ibid*, Article 38(4).

⁴⁴ Ilona Debono (n 9) p.97.

⁴⁵ *ibid*, p. 96.

⁴⁶ Medical Council (Our Mission) < <https://medicalcouncil.gov.mt/en/the-council/our-mission/> > accessed 3 January 2022.



OLJ

GHSI ONLINE LAW JOURNAL