

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Public Law Division

Claim No: CLE/GEN/00346 of 2023

IN THE MATTER of an application by **DR. BERTRAM SEARS** for Judicial Review.

AND IN THE MATTER of the Decision of the Respondent made and dated the 14th day of July A.D. 2021 that: “[...] *The Bahamas Medical Council endorses the recommendations of the Review Committee that you provide more evidence to determine if the courses completed by you are equivalent to the PROBE course that you failed [...].*” (*the Decision*)

AND IN THE MATTER of the Medical Act 2014 (*the Act*).

BETWEEN

DR. BERTRAM SEARS

Applicant

V.

THE BAHAMAS MEDICAL COUNCIL

Respondent

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Kahlil Parker, KC with Robertha Quant for the Applicant
Gail Lockhart-Charles, KC with Tatyanna Maynard for the Respondent

Hearing date(s): 28 May 2026

JUDGMENT

WINDER, CJ

This is the application of Bertram Sears (Sears) for judicial review of the decision made by the Bahamas Medical Council dated 14 July 2021 with respect to his application for the reinstatement of his licence to practice medicine.

[1.] Sears' claim was originally brought in the form of a Standard Claim form filed on May 12, 2023. The action was subsequently converted to a judicial review proceeding by Fraser SJ on 20 June 2023.

[2.] The application for permission to commence judicial review proceedings was made on 4 July 2024, with permission to commence judicial review being granted on 16 December 2025.

[3.] The relief claimed by Sears is set out in his Originating Summons filed on 11 December 2025 which sets out prayers for relief as follows:

- a) An Order of Certiorari to remove into this Honourable Court and quash the Respondent's Decision to refuse the Applicant's application for restoration of his name to the register and to instead require the Applicant to "provide more evidence to determine if the courses completed by you are equivalent to the PROBE course that you failed".
- b) An Order of Mandamus directing the Respondent to rescind the Decision and to:
 - i) Immediately restore the name of the Applicant to the register and issue his Certificate of Registration and Licensure.

Alternatively

- ii) Reconsider and rehear the Applicant's application according to law, affording the Applicant his full right to notice thereof and participation therein.
- c) A Declaration that the Decision was so manifestly unreasonable that no reasonable authority or tribunal, entrusted with the Respondent's powers, could reasonably have come to that decision in all the circumstances of this case.
- d) A Declaration that the Decision was outside the range of reasonable decisions open to the Respondent in the circumstances and/or that there were demonstrable flaws in the procedure and reasoning which led to the Decision, which decision is not supportable on the facts, evidence, and matters that were before the Respondent.
- e) A Declaration that the Decision was ultra vires, arbitrary, oppressive, irrational, unreasonable, unlawful, null, void, and of no legal effect.
- f) A Declaration that the Decision was taken ultra vires the Act and otherwise in breach of section 56 (1)(c) of the Act.
- g) A Declaration that the Respondent's actions complained of herein constituted an intentional and/or malicious failure and/or refusal to perform its statutory duty.

- h) A Declaration that the Respondent's conduct toward the Applicant complained of herein was arbitrary and oppressive.
- i) A Declaration that the Respondent's conduct toward the Applicant complained of herein was arbitrary, oppressive, inhumane, degrading, discriminatory, and/or otherwise unconstitutional.
- j) An award of damages.
- k) An award of vindictory damages for the Respondent's unlawful interference with, and violation of, the Applicant's statutory, constitutional, and due process rights.
- l) Damages for Breach of Statutory Duty.
- m) The costs of and occasioned by this application and action.
- n) Such further or other relief as to the Court may seem just.
- o) All necessary and consequential directions.

[4.] Sears' application relies on the evidence in the affidavit of Alexandria Fernander filed herein on the 5 July 2024 and his affidavit filed on 21 January 2026. The BMC relies on the evidence in the affidavit of Shelia Cuffy dated 6 January 2026 and the affidavit of Dr. Merceline Dahl-Regis dated 1 April 2026.

[5.] The facts of the claim are not in any real dispute. I therefore adopt, with necessary modifications the factual background as outlined in the BMC's submissions. These are as follows.

[6.] The underlying disciplinary proceedings brought against Sears arose from a formal complaint by Atlantis Resort. The complaint alleged that, between 6 November 2014 and February 2015, the Applicant issued 185 sick certificates without conducting medical examinations to determine whether the certificates should be granted.

[7.] The Disciplinary Committee (the Committee) of the BMC conducted a detailed investigation, in which Sears was legally represented. The Committee held two days of hearings, heard evidence from Sears, and invited written closing submissions on his behalf. The Committee found that Sears was not a credible witness and had not told the truth. It concluded that he had forged sick certificates, despite his denials, and that he was guilty of serious professional misconduct.

[8.] The Committee recommended that Sears be reprimanded and that the reprimand be entered in the Medical Register. It further recommended that he attend an intensive course in Medical Ethics, Boundaries and Professionalism conducted by the National Centers for Personalized Physicians Evaluation and Education, namely the PROBE Program. The Committee recommended that failure to enroll in and complete that program should result in suspension of his licence until he complied.

[9.] The PROBE Program is described by the BMC as an intensive, personalised, non-adversarial remediation program. It comprises pre-session assignments, a 16-hour seminar program, and a final essay graded by PROBE. It is targeted to the practitioner's specific infraction and requires disclosure and reflection on the misconduct.

[10.] The BMC accepted the Committee's recommendation and findings. A PROBE Program was scheduled to take place on 25-27 April 2017 in Raleigh, North Carolina. Sears was advised of these dates, which would have enabled him to comply with the BMC's timescales for undertaking rehabilitation. However, by 6 April 2017, Sears still had not enrolled on the course.

[11.] Sears initially appealed the BMC's decision but subsequently discontinued his appeal by notice of discontinuance dated 18 July 2017.

[12.] Sears eventually enrolled in the PROBE Program and attended the course in Denver, Colorado on 24–26 August 2017. He was unsuccessful in this attempt. On 5 October 2017, the BMC wrote to Sears and advised him that they had been made aware of the fact that he had failed the PROBE Program and that his licence remained suspended until he satisfied the Council's requirements.

[13.] Sears did not re-enroll in the PROBE program.

[14.] In January 2021 Sears applied for reinstatement and provided evidence that he had completed an online course entitled "Intensive Course in Medical Ethics, Boundaries and Professionalism" at Case Western Reserve University. The Case Western course is a continuing medical education course. Sears did not seek to inquire as to the BMC's view of the equivalency of the Case Western Course to, the PROBE Program, prior to enrolling in the course.

[15.] The BMC responded to the application for reinstatement in a letter dated 14 July 2021. That letter, which is the subject of these judicial review proceedings, provided as follows:

Dear Dr. Sears

RE: Reinstatement

The Bahamas Medical Council discussed the report of the Review Committee's review of documentation submitted by Ms Romona Farquharson on your behalf.

The Bahamas Medical Council endorses the recommendation of the Review Committee that you provide more evidence to determine 'if the course completed by you are equivalent to the PROBE course that you failed. You were made aware in previous communication from the Council, that you should seek approval by the Council before enrolling in a Physicians Reentry Program.

Regards

Dr Merceline Dahl Regis
Registrar

[16.] The BMC says that it gave Sears an opportunity to provide further evidence that the Case Western course was equivalent to the PROBE Program, and did not refuse his application outright.

[17.] Sears did not respond to that request until 27 October 2022 when his attorneys, Messrs. Cedric Parker & Co., wrote to the BMC asserting that the Case Western course was equivalent to the PROBE Program. The BMC says that Sears' attorneys did not provide further evidence or any reasoned basis for that assertion.

[18.] In its evidence and submissions, the BMC says that the Case Western Course is not equivalent to the PROBE program. In respect of the PROBE Program, the BMC says that:

- (a) it does not appear to require a substantial post-course assessment equivalent to the PROBE essay;
- (b) it does not appear to provide an individual Evaluation and Assessment Report;
- (c) it does not appear to grade participants by unconditional pass, conditional pass, or fail;
- (d) it does not appear to provide the same personalised assessment for licensing or reinstatement purposes; and
- (e) it carries fewer credits than the PROBE Program.

[19.] These proceedings were not commenced until 23 May 2023.

Law Analysis and Disposition

[20.] Sears submits that he provided the BMC with all reasonably available information showing that the Case Western Reserve University School of Medicine course in Medical Ethics, Boundaries and Professionalism was equivalent to the course recommended by the BMC. He says Case Western was accredited by the Accreditation Council for Continuing Medical Education and that he was therefore entitled to a substantive decision on his application for restoration.

[21.] Sears says the BMC acted unreasonably, unlawfully, *ultra vires*, and oppressively by requiring further evidence of equivalence and by failing to respond substantively to later communications. If the BMC had a genuine concern about the course, Sears argues that it should have conducted a transparent investigation, communicated its findings, and raised any concerns directly with Case Western, which had invited such contact.

[22.] Sears further contends that the BMC offered no equivalent course of its own and has shown no lawful basis for requiring him to complete a particular foreign programme at his own expense. He maintains that he was entitled to a lawful pathway to resume practice in The Bahamas, particularly where both programmes were said to be ACCME-accredited.

[23.] Finally, Sears characterizes the Decision as a continuing wrong that leaves him in regulatory limbo. He says the Council unlawfully delegated its statutory responsibility to an undisclosed Review Committee, failed to act immediately or with reasonable speed under section 56(1)(c) of the Act, and denied him due process in a manner that interfered with his ability to practice medicine.

[24.] In the course of the action the BMC has provided the reasoning for having concerns as whether the PROBE Program was equivalent to the Case Western course in addition to the report of the review committee. Its true case, however, was that:

- (a) The application is fatally tardy and should not be permitted or refused on the account of delay; and
- (b) This is not an appropriate case for judicial review
- (c) The BMC's request for further evidence was lawful and rational
- (d) There no procedural unfairness.

[25.] The BMC says that Sears' application should be dismissed for delay. They say that on Sears' own case, the decision challenged was communicated by the letter dated 14 July 2021 however, the application for judicial review was not made until 4 July 2024. The BMC says the delay is far outside the six-month period prescribed by Rule 54.4 of the Supreme Court (Civil Procedure) Rules 2022 and also fails the independent requirement of promptness.

[26.] I am satisfied that this complaint of the BMC, as to a failure to act promptly and within the prescribed time limits, is meritorious and completely disposes of the claim.

[27.] Rule 54.4 of the Supreme Court (Civil Procedure) Rules 2022 provides:

54.4 Delay in applying for relief.

- (1) An application for judicial review shall be made promptly and in any event within six months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.
- (2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.

(3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

[28.] The issue of delay and promptitude in applying for judicial review was considered in the Court of Appeal case of **Moxey v. The Bahamas Bar Council [2017] 1 BHS J. No. 125**. Although **Moxey** was decided under the old Rules of the Supreme Court, the provisions are identical. At paragraphs 26-28 in **Moxey**, the Court stated:

Delay - When Time Begins to Run and Explanation

26 In *Regina Securities Commission of the Bahamas v. Ex Parte Petroleum Products Ltd* [2000] BHS J. No. 30, an application for judicial review by Petroleum Products Ltd. ("Petroleum") in respect of the decision of the Securities Commission of The Bahamas (the "Commission") to register a prospectus for the public floatation of Freeport Oil Holding Company Limited ("FOHCL"), the parties disagreed as to the date upon which Petroleum became aware of the grounds upon which a judicial review application could be made. The Commission registered the prospectus on 1 June 1999; but Petroleum contended that the operative date was, the day 1 July 1999. Hayton, J said at paragraphs 18 and 19:

18. In my view, when grounds for the application first arose" was on 1 June 1999, when the prospectus was registered, being the complained of conduct of the Commission, not on 1 July 1999 when FOHCL inevitably took advantage of such registration to market itself to the public. Thus, the application is even beyond the six month limit, quite apart from the fact that, as the English Court of Appeal stated in *R v Stratford-on-Avon DC ex p Jackson* [1985] 1 WLR 1391 at 1322, 'The essential requirement is that the application must be made promptly'

19. If such essential requirement is not satisfied in any event within the objective six month period, the question arises whether or not "the Court considers that there is good reason for extending the period". It is here, in my view, that the Court should take account of the time the impugned matter came to the knowledge of the applicant, it should consider whether the applicant, after acquiring such knowledge, made the application promptly, there being a greater need to act promptly the greater the period since the objective date of the grounds for the application. If the applicant did then apply promptly the period should be extended to that necessary to make the application timely"

27 In *Bahamas Hotel Catering & Allied Workers Union v. The Attorney General the Bahamas Hotel & Maintenance & Allied Workers Union; West Bay Management Limited v. Bahamas Hotel Maintenance & Allied Workers Union* [2010] 1 BHS 3. No. 67, the appellant sought to reverse a decision of then Chief Justice Burton Hall to refuse the relief sought in a judicial review application. Longley, JA (as he then was) delivering the decision of the Court, stated:

16. Applying the overriding principle of promptness, it seems to me that where the six month limitation period has expired the court must ask itself several questions. The first is: what is the decision the applicant seeks to impugn? Second, when did the applicant first become aware of the decision it seeks to impugn? Third, did it act promptly in seeking leave to make an application for judicial review once it became aware of the decision? Fourth, as an alternative to question three, if the applicant did not act promptly in making the application to challenge the decision it seeks to impugn has it otherwise proffered good reason for the entire period of delay?

17. There is undoubted overlap between questions three and four. It is only if the court concludes that the applicant acted promptly after becoming aware of the decision it seeks to impugn, or that it has proffered good reasons to explain the delay in making the application to apply for judicial review, will time be extended on the basis that good reason exists."

28 Longley, JA continued at paragraph 26 and said, inter alia:

"26. However, for the purposes of Order 53r.4 of the RSC time begins to run from the date when grounds for the application first arose."

[29.] Sears asserts that he is challenging a decision made on 14 July 2021. This claim was commenced in May 2023, approximately two years later, albeit incorrectly commenced as a standard claim form. The six-month time limit having been exceeded, the Court must consider the several questions posed by Longly JA, in **Bahamas Hotel Catering & Allied Workers Union** (referred to above).

[30.] Sears accepts that the letter of 14 July 2021 was communicated to him and that he did not act promptly in seeking leave to make an application for judicial review once it became aware of the decision. The only question to be considered therefore is whether Sears has proffered good reason for the entire period of delay.

[31.] Paragraph 13 of the Affidavit of Alexandria Fernander, filed of behalf of Sears, seeks to proffer his reason for the delay:

13. The Applicant humbly apologizes for the delay in instituting these proceedings. the Applicant undertook significant cost and expense in securing counsel to represent him in this matter and the unreasonable and protracted delays and silence on the part of the Respondent contributed to the overall time taken. The Applicant instituted these proceedings as soon as he could manage to do so following the Respondent's failure and refusal to engage with Counsel.

[32.] I accept the BMC's submission that Sears "gives no acceptable explanation for the delay", and that a "general assertion that he had to secure new counsel, or that the process took time, cannot amount to good reason for a delay measured in years." I therefore did not accept that Sears has proffered a sufficient reason or that it was an answer for the entirety of the period of the delay.

[33.] Firstly, Sears has not demonstrated any urgency in pursuing the reinstatement of his licence. The BMC, on 1 March 2017, imposed the condition that Sears complete the PROBE Program timely and indicated that he should enroll in the program scheduled for 25-27 April, 2017. Sears did not enroll in the Program, as directed, resulting in the cancellation on his licence with effect from 1 June 2017. Sears eventually took the PROBE Program held in August 2017 and was unsuccessful. Having failed the program, and rather than retake the PROBE Program (which he was permitted to do), Sears enrolled himself in the Case Western Program. Sears undertook this program without determining whether the BMC would accept it as an alternate to the PROBE Program that he was directed to complete. Remarkably, he does not enroll in this program until February 2020, two and a half years later. Even more remarkably, Sears does not apply to be reinstated until January 2021, a year after completing the course.

[34.] Secondly, Sears' claim to having challenges with securing legal assistance, is unsupported by any particulars. Even if this claim was sustainable, it does not account for the entirety of the delay period. By October 2022 Sears had secured legal counsel, which resulted in the letter of 22 October 2022 asserting, without the additional evidence requested, that the Case Western course was equivalent to the PROBE Program. It would be another seven months before the Claim Form is filed.

[35.] The BMC wrote to Sears, in its 14 July 2021 letter, asking that he substantiates his claim that the Case Western course, that he had unilaterally determined he would pursue, was equivalent to the PROBE Program. He did not respond to the letter until some 15 months later, at which time his new attorney indicates that the Case Western course is equivalent to the PROBE Program, without providing the requested evidential support. I accept that the BMC ought to have responded to this letter, but that issue arose after the decision of which Sears complains.

[36.] There is good reason for the imposition of time constraints to ensure judicial review applications are dealt with by the court timely. In English case of **Caswell v Dairy Produce Quota Tribunal for England and Wales** [1990] 2 AC 738, according to the headnote, the applicants successfully applied for leave to apply for judicial review of the Dairy Produce Quota Tribunal's decision refusing their claim for qualification in dairy produce quota. The judge refused to grant relief on the ground that the application was not made promptly or within three months as prescribed by RSC Ord 53, r 4(1) and that it would be detrimental to good administration. The House of Lords, dismissing the applicants' appeal, held that the failure to apply for leave to apply for judicial review promptly and within the period required by r 4(1) of the Order amounted to

undue delay under s 31(6) of the Supreme Court Act 1981. Also, the court could refuse leave unless there was good reason for extending the time within which to apply. However, even if leave was granted, the court could subsequently refuse substantive relief on the ground that to grant it would be likely to cause hardship or prejudice or be detrimental to good administration.

[37.] I am satisfied that this is not a case where there is good reason for extending the time within which to apply for judicial review. I am also satisfied that any relief sought by Sears, assuming there was good ground, ought to be refused on the ground that to grant it would be likely to cause hardship or prejudice or be detrimental to good administration. The BMC has pointed to the protracted lapse of time since Sears was directed to complete the PROBE Program, arising from his very serious infractions, some 6 years ago. In particular, they say, that *“the delay causes real prejudice to good administration and to the public interest. The condition imposed in 2017 required timely completion of the PROBE Program. The Applicant failed that condition. Many years have now passed. Any consideration of reinstatement would require an up-to-date assessment of his suitability, competence, conduct, and compliance with statutory requirements.”*

[38.] I accept this submission and will dismiss Sears’ application for judicial review on the basis that the application was not made timely.

[39.] The BMC shall have its costs, to be summarily assessed, in default of agreement.

Dated this 30th day of July 2026

A handwritten signature in black ink, appearing to read 'I. Winder', with a large loop at the end.

Sir Ian. Winder
Chief Justice