



**BEFORE THE DISCIPLINARY COMMITTEE OF PAKISTAN MEDICAL COMMISSION**

**In the matter of**

**File no. (22174-P)/2017-Legal**

**Information referred by Senior Director, Physician Data Center, Federation of State Medical Board USA regarding Dr. Muhammad Abu Bakar Atiq Durani**

Mr. Ali Raza Chairman

Mr. Aamir Ashraf Khawaja Member

Dr. Asif Loya Member

*Present:*

Dr Tariq Sohail Respondent

Mr. Khalid Ishaq Counsel on behalf of respondent

**Factual Background**

**Information received from Federation of State Medical Boards USA**

1. Erstwhile PMDC received an email on 10-02-2016 from David Hooper, Senior Director Physician Data Centre, Federation of State Medical Boards, USA regarding disciplinary proceeding against Dr. Muhammad Abu Bakar Atiq Durrani in USA. The doctor had also been registered with PMDC vide registration No. 22174-P.



2. Dr. Abu Bakar applied on 09-03-2016 for renewal of his license which had expired on 31-12-2015 and he came to know that his registration status had been blocked by PMDC. Later on his license was suspended on 02-05-2016.
3. Pursuant to information provided by FSMB regarding disciplinary actions against Dr. Abu Bakar, an email was sent on 16-02-2017 to the relevant quarters asking following questions:
  - i. If a doctor is registered in one state can he practice in the other state?
  - ii. If a doctor is blocked/license suspended for any offence in one state can he be registered/ be allowed to practice in other state?
4. The reply received from different American medical boards on 21-02-2017 are as under:-

Sr. No.	Name of Board	Reply
1.	South Carolina Board of Medical Examiners	i. No, he or she must have an active South Carolina license to practice in this state. ii. No, not in South Carolina.
2.	State Medical Board of Ohio	i. A physician can practice in any state in which he or she has a current active license. Generally, a physician needs a separate license in each state in which he or she wants to practice. There is an exception for physicians who are working in US Federal facilities, such as an armed forces base or a active license in any state of the USA, the physician need not be separately licensed in the state in which the US federal facility is located unless that his or her only state license. ii. The answer is yes, assuming that the license in the other state is current and active with no restrictions. Please note that most states have the ability to take a disciplinary action against a licensee based solely on a disciplinary action having been taken by another state.
3.	Federation of State Medical Boards.	Federation Credentials Verification Service verifies identity, medical education, postgraduate training (US and Canada – accredited only, non-accredited fellowships and /or research verified if



	necessary to meet designated board requirements), examination history, ECFMG certification (if applicable), and board action history.
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4. The Council in its 151<sup>st</sup> Session held on 02-03-2017 at Islamabad considered the case of Dr. Abu Bakar and constituted a committee to inquire charges levied against the doctor from FSMB and provide personal hearing to Dr. Abu Bakar in this regard.
5. Dr. Abu Bakr appeared before the President PMDC and also enquiry committee on 22-03-2017 for a personal hearing where he requested the President PMDC to send an email to all the medical boards of USA which will prove that even if a registration license of a medical practitioner is suspended from one board he can still practice in the other state, if he is registered in that particular state.
6. The inquiry committee gave its findings on 22-03-2017 with the recommendation that in the light of the evidence on record and inability of the Dr. Abu Bakar Atiq Durrani to satisfactorily reply to the allegation raised against him, the committee feels that it would not be in public interest to allow the doctor to continue practice as a practitioner in Pakistan. Therefore, his PMDC registration be cancelled permanently. No cogent reasons for the decision were provided except reliance on allegations contained in the proceedings initiated against the doctor for civil damages in the USA.
7. The Council considered the recommendations of the inquiry committee in its 152<sup>nd</sup> session held on 09-06-2017 and decided to refer such recommendations to the Disciplinary Committee and further decided that if license of a doctor cancelled by a licensing body other than PMDC it shall have effect on registration of that doctor with PMDC. However, PMDC shall review such cases and decide their fate on merit. Pertinently no such reciprocal arrangement or policy existed at that time or later between the USA and Pakistan.



## Proceedings of Disciplinary Committee of Erstwhile PMDC

8. The Disciplinary Committee of PMDC took up the matter of Dr. Abu Bakr in its meeting held on 23-10-2017 at Lahore. The respondent doctor Abu Bakar Atiq Durrani along with his counsel Mr. Ishfaq Naqvi appeared before the Disciplinary Committee. Matter was adjourned with the direction that respondent doctor shall provide sequence-wise complete detail of the cases against him in USA and also court order to enable the Disciplinary Committee to decide accordingly.
9. Second meeting of the Disciplinary Committee of PMDC on the issue held on 13-03-2018. Expert opinion was also sought from Brig. Dr. Syed Arsal Haider Bhukari, orthopedic Surgeon who stated that the suspension of PMDC license of Dr. Abu Bakar was in response to request by FSMB (USA). If the doctor has been cleared in USA court the onus to confirm that would lie with Dr. Abu Bakar. Hence he should approach FSMB and inform them of the acquittal. Therefore, suspension of Dr. Atiq can be reviewed in light of decision of FSMB that will be given in light of acquittal of the doctor by US courts. Pertinently the opinion by the expert was given on a question which did not require an expert opinion from an orthopedic surgeon rather required consideration under the regulatory framework by the Committee itself.
10. On the advice of the stated expert, the Disciplinary Committee of PMDC recommended that registration of Dr. Abu Bakar with PMDC shall remain suspended. He should get himself cleared from FSMB and after receipt of his clearance from FSMB, his case of renewal of license shall be processed in PMDC. Further, Punjab Health Care commission shall also be written letter to inform that his license is suspended and he is not allowed to practice for the final clearance.



11. Third meeting of the Disciplinary Committee of PMDC on the issue held on 28-04-2019. The Disciplinary Committee observed that PMDC license of Dr. Abu Bakar is expired and he was continuing to allegedly practice knowingly. Show Cause Notice was directed to be issued to the doctor to explain the reasons thereof. Further it was directed to ask Ohio Medical Board to provide the certified copies of disciplinary proceedings against Dr. Abu Bakar.
12. Fourth meeting of the Disciplinary Committee of PMDC on this issue held on 10-06-2020 at Islamabad which was adjourned on request of Dr. Abu Bakar as he was in quarantine due to ongoing COVID 19 pandemic and positive result of one of his colleagues.
13. Fifth meeting of the Disciplinary Committee of PMDC was held on 23-07-2020 at Islamabad. Mr. Saleem Ur Rehman joined the proceedings as a representative counsel of FSMB who was asked to get his appointment letter attested and authenticated through diplomatic channel. Further, it was recommended to form a sub-committee to examine in detail the proceedings of the case and develop recommendations for the Disciplinary Committee.

#### **Court Cases**

14. It is pertinent to mention here that Dr. Abu Bakar filed three writ petitions (WP No. 4241/2017, WP No. 2033/2017 and WP No. 34937/2020) before Islamabad High Court and Lahore High Court against the decisions of the Council and proceedings of Disciplinary Committee. Writ Petitions 4241/2017 and 2033/2017 were disposed of by the Hon'ble Islamabad High Court.
15. Writ Petition 34937/2020 is pending before Lahore High Court. Lahore High Court passed an order dated 06-08-2020 restraining PMDC "from passing a final order regarding the petitioner, till the next date of hearing".

#### **Disciplinary Committee under Pakistan Medical Commission Act 2020**



16. Pakistan Medical and Dental Council was dissolved on promulgation of Pakistan Medical Commission Act on 23 September 2020 which repealed Pakistan Medical and Dental Council Ordinance, 1962. Section 32 of the Pakistan and Medical Commission Act, 2020 empowers the Disciplinary Committee consisting of Council Members to initiate disciplinary proceedings on the complaint of any person or on its own motion or on information received against any full licence holder in case of professional negligence or misconduct. The Disciplinary Committee shall hear and decide each such complaint and impose the penalties commensurate with each category of offence.

#### **Hearing on 30-01-2021**

17. The Disciplinary Committee held the hearing of pending disciplinary proceedings including the matter of Dr. Abu Bakar Attiq Durrani on 30-01-2021.
18. Mr. Abu Bakar was present along with his legal counsel Mr. Khalid Ishaq who argued that proceedings are pending since 2016 and five (5) years have lapsed without conclusion. No professional misconduct or professional negligence has ever been alleged against the respondent. PMDC could not possibly enter into any treaty or agreement with foreign countries as per US State law. The respondent is not required to clear his name from FSMB as FSMB is not any legal authority of medical profession in US. All documents tendered before the Disciplinary Committee of the PMC are admittedly foreign documents purported to have been issued by the Ohio and Kentucky state Medical Boards however none of them fulfill the conditions laid down in the Qanun-e-Shahadat. Lastly, he produced the judgment of supreme Court of the State of Ohio, USA wherein, the court had since reversed the earlier judgment of the first District Court of Appeal against the applicant in the claims brought against Dr. Abu Bakar for damages on the basis of civil wrong of having undertaken surgeries which were not properly indicative or required.
19. During the hearing, the respondent and his legal representative informed the Disciplinary Committee that Writ Petition No. 34937/2020 is pending adjudication before the Lahore High Court. However, it was stated that the said petition will be withdrawn from the court as the respondent had full faith in the committee to decide the matter.



20. Mr. Saleem –ur-Rehman meanwhile had requested through email dated 29-01-2021 that US law firm Eric Deters who had given him authorization on behalf of the firm have been contacted and to provide the letter of authorization duly signed by the Pakistan Embassy at Washington, which due to Coovid-19 is not possible for them. Thus, he would not be appearing in the hearing before Disciplinary Committee. Consequently the matter proceeded without the presence of the said persons who all claimed to represent FSMB but none had any authorization on the record to do so.

### **Findings/Conclusion**

21. The Fundamental question involved in this particular case is whether the Pakistan Medical and Dental Council and nor the Pakistan Medial Commission or its Disciplinary Committee could initiate disciplinary proceedings against a doctor registered with PMDC/PMC who was alleged to have commit professional negligence and misconduct in any other country? And whether a determination by a single state licensing board in the USA or a decision of a non licensing entity FSMB could be exported to Pakistan for enforcement through an application for disciplinary action under the relevant regulatory framework of the PMC or prior thereto the PM&DC. In effect by acting in this case would the PMC in fact be exercising extra territorial jurisdiction? A further question arises as to whether suits filed in the USA against a doctor for recovery of damages on account of civil wrongs, which in itself did not result in the doctor being held guilty of negligence by the licensing regulator could be made the basis of action against a licensee in Pakistan?
22. In this regard reference is made to relevant decisions of Council and recommendations of the Disciplinary Committee. The PMDC in its 115<sup>th</sup> meeting held on 2<sup>nd</sup> & 3<sup>rd</sup> December 2009 at Karachi had a discussion on action on reports by regulatory authorities and other medical and dental councils in the world against practitioners registered with PMDC. It was discussed that various medical regulatory authorities like General Medical Council and Irish Medical Council report action taken against registered medical practitioners of the PMDC who are working in their countries and who have been guilty of violation of ethics and have been guilty of professional misconduct and have received penal actions. It was decided that as these



practitioners have brought bad name to PMDC, all these cases shall be tried by PMDC, be it in absentia. Further, the Council empowered the Disciplinary Committee to try these cases and take appropriate action against these individuals on behalf of the Council. The Council ordered that vigil about such cases shall be maintained and the information gathered shall be presented to the Disciplinary Committee for trial and action taken by PMDC shall then be shared with the rest of the world. Pertinently the Council of PMDC did not decide that foreign decisions or pending actions would result in direct action or enforcement in Pakistan rather it only directed that such foreign decision or actions could be the cause of action to initiate an independent complaint in Pakistan and which would be heard and decided on merit after due hearing.

23. The Disciplinary Committee of PMDC in its meeting elaborated on the decision of the Council and also spelled out the rationale behind such decision when it recommended that the Council's decision as to fitness to practice be communicated to all regulatory authorities of the world with a request not to allow practice by Pakistani practitioner sentenced by the Disciplinary Committee of the PMDC unless such decision is reviewed or suspended by court of law. Similarly, on a reciprocal basis the decision of a foreign regulatory authority declaring a Pakistani practitioner as not fit to practice should be honored and implemented and the sentence given out by the foreign regulator shall be enforced in Pakistan, as the foreign regulatory authority has passed the sentence after inquiry and personal hearing which must be accepted by the Council and thus there is no need for a fresh trial by the Council. Moreover, the Disciplinary Committee recommended that in any event the decision of foreign regulatory authority shall be presumed to be valid and competent since the PMDC would also get its own decisions recognized in foreign jurisdiction and for this it is necessary that this Council accepts and acts in accordance with decision of foreign regulatory authorities.
24. Apparently, reciprocity formed the basis of recommendations of the Disciplinary Committee that in any event the decision of foreign regulatory authority shall be presumed to be valid and competent since the PMDC would also get its own decisions recognized in foreign jurisdiction and for this it is necessary that this Council accepts and acts in accordance with decision of foreign regulatory authorities. However, neither did the PMDC Council at any time decided





on the recommendations of the then Disciplinary Committee and nor exists any memorandum of understanding between PMDC and any other medical regulatory body in the world to materialize penal actions on reciprocity basis. Furthermore, there is no treaty at the state level to give effect to such decisions of PMDC.

25. It appears on the information shared by Federation of State Medical Board, the Council suspended the license of Dr. Abu Bakar. Dr. Abu Bakar applied for renewal of license on 09-03-2016 to practice in Pakistan. He was informed then that on account of pending complaints against him in USA, his license would not be renewed. Further, disciplinary action was initiated on the basis of information received through Federation of State Medical Boards, USA which is neither a law enforcing agency nor a medical regulatory authority in the United States.
26. Advocate Salim-ur-Rehman joined the proceedings before the Disciplinary Committee on 09-10-2019 to plead case against Dr. Abu Bakar on the basis of legal proceedings in United States of America. From the authorization submitted by him on 10-08-2019, Mr. Salim ur Rehman produced authorization as an outside legal counsel on behalf of Benjamin M. Maraam II, co-Counsel with Deters law firm. He was directed to submit his authorization duly attested by the concerned embassy which he failed and also did not appear before the Disciplinary Committee on 30-01-2021 on the same pretext. He has also not attached any single documents regarding the relation of Deter Law Firm with Federation of State Medical Board. Therefore, it remains unclear why Mr. Salim ur Rehman joined the proceedings and who exactly he intended to represent.
27. During the hearing on 30-01-2021, Dr. Abu Bakar explained to the Disciplinary Committee that he had valid licenses in six states of United States of America which include Texas, Florida, Kentucky, Maryland and Ohio. His license was revoked only in Ohio on the basis of the civil claims filed against him. Since he is in Pakistan since 2015 and does not intend to go back to the USA at this time, therefore, he did not get the licenses renewed, which is admittedly a normal practice. He also clarified that the cases filed before the courts in USA pertained to damages claims only and that Supreme Court of the State of Ohio has already reversed the



judgment of the First District Court of Appeal and decided the case in his favour. The decisions of the original and appellate court have been reviewed confirming the above.

28. He further argued that all these facts have been explained to Disciplinary Committee of PMDC in its various meetings, however, neither the proceedings have been concluded nor his license has been renewed for last six years. His license is still suspended.
29. The facts and documents available on the record were perused. License of Dr. Abu Bakar was suspended by PMDC on the basis of information received from Federation of State Medical Boards regarding his alleged misconduct and suspension of license in the State of Ohio. Such decision to suspend license of Dr. Abu Bakar was taken pursuant to earlier decision of Council in 2009 whereby the Council decided that license holders of PMDC who are working in other countries and who have received penal action for professional misconduct have brought bad name to PMDC. All these cases shall be tried by PMDC in absentia. Further, the Council empowered the Disciplinary Committee to try these cases and take appropriate action against these individuals on behalf of the Council. The Council in fact assumed itself three different aspects of jurisdiction; prescriptive jurisdiction, adjudicative jurisdiction, and enforcement jurisdiction. It asserted its power to prescribe a rule for PMDC registered doctors who are practicing in other countries that in case they are penalized in other countries they are bad name to PMDC. Simultaneously, it extended its adjudicative jurisdiction to subject such doctors to disciplinary proceedings and try them in absentia for their wrongdoing in other countries. By suspending license of Dr. Abu Bakar, the Disciplinary Committee induced its enforcement jurisdiction over a subject matter which occurred outside its territorial limits and more so in fact wrongly applied the decision of the Council in that instead of trying the matter as an original complaint it sought to blindly enforce the foreign act of a single state licensing board (Ohio) where such direct export of a foreign decision or its enforcement was not possible or within the mandate of the Disciplinary Committee.
30. Regulatory bodies are created through statutes which set the bounds of their powers. Therefore, if at all anything is relevant that is the statutory text and context to gauge extraterritoriality of regulator. That is to say, the statute itself must clearly indicate



extraterritorial application. There is nothing provided under the PMDC Ordinance 1962 or even Pakistan Medical Commission Act 2020 which allows the Council or its committee to extend jurisdiction to persons and conduct abroad. Similarly at no stage was PMDC vested with the authority to allow a direct import of a foreign decision of an authority and its direct enforcement in Pakistan. Therefore, the decision taken by the Council to penalize Dr. Abu Bakar or disciplinary proceedings initiated by its committee against Dr. Abu Bakar for his conduct in any state of United States of America is an exercise of powers beyond the territorial limits, hence not justifiable under the law.

31. Further, we are of the view that flipside of such decision to accept and implement the penal actions of foreign regulatory bodies is that any extraterritorial exercise of force inside another state infringes that state's jurisdictional monopoly of force within its borders, often popularly described as "sovereignty." In order to achieve the above, it is required that proper reciprocal arrangements are put in place with the proper foreign licensing regulators to provide for such export of foreign decisions and their enforcement in Pakistan or vice versa. However, that is a matter for the Council to decide on and prescribe through regulations so that all licensees are fully aware of the same.
32. Therefore, for reasons recorded the Committee does not see any reason why these disciplinary proceedings against Dr. Abu Bakar should not be discharged and license activated.
33. However, it is observed that license of Dr. Abu Bakar expired on 31-12-2015 and he applied of renewal of license on 09-03-2016. During this period Dr. Abu Bakar admittedly continued to practice at Doctors Hospital, Lahore which is an admitted default on his part as it is mandatory to practice with a valid license only. Therefore, the Disciplinary Committee is of the opinion that Dr. Abu Bakar on this account failed to act properly and be penalized for practicing with an expired license albeit it being only for three months. In this regard, a penalty of PKR 500,000 (Five Hundred Thousand Rupees) is imposed on Dr. Abu Bakar which he is directed to pay within 15 days of issuance of this decision.



34. Before parting with this matter, the Committee noted that the plethora of civil claims filed against Dr. Abu Bakar in the USA primarily related to his having done surgeries which were not indicative. In effect potentially having advised surgeries where the same may have been avoidable. While none of the said allegations were proved against Dr. Abu Bakar, the Committee believes that it would be in the interest of both the public and the doctor himself that his surgery privileges for a period of 12 months are placed on observation and are made subject to review by a committee comprising of doctors of the hospital where he practices and one independent doctor to determine the surgeries proposed by Dr. Abu Bakar to be properly indicative.
35. The subject proceedings stand disposed of in terms of the above directions.

Aamir Ashraf Khawaja  
Member

Dr. Asif Loya  
Member

Mi Raza  
Chairman

23<sup>rd</sup> February, 2021