

**IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION**

HIDDEN J

Thursday 29 May 2008

**12277 of 2008 Richard Francis Gorman v Performance
Review Panel & the New South Wales
Medical Board**

JUDGMENT

- 1 **HIS HONOUR:** The plaintiff, Dr Richard Gorman, has had adverse findings made against him concerning his professional competence by the Performance Review Panel constituted under the *Medical Practice Act* 1992. The Panel has imposed certain conditions upon his registration as a medical practitioner. He has appealed against the Panel's orders to the Medical Tribunal of New South Wales. By summons in this court, he seeks a stay of those orders pending the hearing of the appeal.

- 2 He is unrepresented. He issued the summons against the Performance Review Panel. It is the NSW Medical Board which has an interest in opposing the application, and at the hearing I directed that the Board be added as a defendant. The Performance Review Panel has entered a submitting appearance.

- 3 The plaintiff relied upon written material he had prepared, part of it evidence and part of it by way of submission. He developed those submissions in oral argument. The Medical Board was represented by Ms Richardson of counsel. She presented concise written submissions,

including reference to relevant authority, which she also developed orally. I trust that I do no disservice to her submissions, or to those of the plaintiff, by dealing with the matter briefly. It is unnecessary to recite the background to the matter, the Panel's findings or the detail of the conditions imposed.

- 4 I have been guided by the principles governing applications such as these summarised by Spigelman CJ in *NSW Bar Association v Stevens* [2003] NSWCA 95 at [83]-[104]. In particular, I have had regard to what is there said about the special considerations governing proceedings involving professional rights to practice, in which the public interest looms large. There is no question about my jurisdiction to grant a stay, but that public interest is reflected in s98A(6) of the *Medical Practice Act*, which provides that an appeal to the Tribunal "does not affect any finding or exercise of power with respect to which it has been made until the Tribunal makes an order on the appeal".
- 5 A good deal of the plaintiff's argument was directed to the merit of the appeal, rather than the need for a stay. Nothing he put could warrant a conclusion that, if the conditions imposed by the Panel remained in force, the purpose of the appeal would be frustrated or the benefit of success in the appeal would be lost. Nor am I persuaded that any of the conditions is so onerous, or places such a fetter upon his right to practice, that the interests of justice would require that it be stayed for the period of several months until the appeal could be heard. In this context, it is necessary to refer only to two of the conditions.
- 6 The condition numbered 2 requires (among other things) that the plaintiff provide each patient with an information sheet setting out his philosophy of medical practice, disclosing certain excluded areas of practice, describing his approach to treatment by spinal manipulation and informing the patient of the risks and benefits of that treatment. The patient must sign and date the information sheet before any consultation can take place, and it must be countersigned by another member of the staff at the medical centre

where he works. Much of his argument was directed to this condition, but it is unnecessary to set out his detailed complaints about it. It is sufficient to say that it does not appear to me that, in the short term, it imposes an unreasonable burden upon his practice or, indeed, upon other staff at his medical centre.

- 7 Condition 4 prevents him from conducting a spinal manipulation under general anaesthetic until a performance assessment required by one of the other conditions is completed and his professional performance is not considered unsatisfactory. That assessment is to be undertaken within three months of the date of the Panel's decision. The evidence is that the plaintiff has not performed a manipulation under a general anaesthetic for some years and, again, the condition is clearly not so burdensome as to justify a stay.
- 8 Ms Richardson raised other matters in opposition to the application, but it is not necessary to consider them. I am not satisfied that any basis for a stay has been made out, and the summons is dismissed.

I certify that this and the ² preceding
pages are a true copy of the judgment
~~summing up sentence~~ herein of the
Honourable Justice Peter Hidden
Dated 29/05/08 Associate 