

IN THE MEDICAL TRIBUNAL OF NEW SOUTH WALES

THE MEDICAL PRACTICE ACT 1992

DEPUTY CHAIRPERSON:

HIS HONOUR JUDGE PUCKERIDGE QC

TRIBUNAL MEMBERS:

DR D CHILD

DR G ABOUYANNI

MS H KIEL

NO: 40024/09

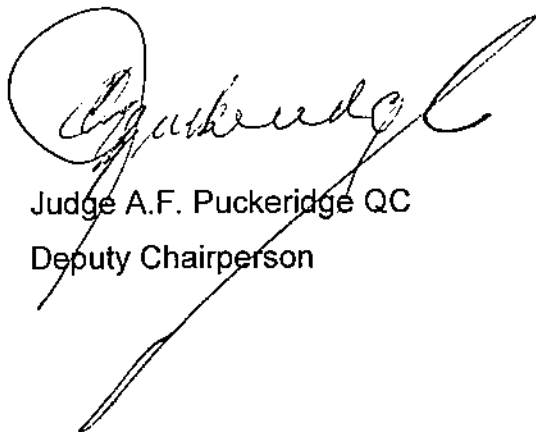
DR MONTASER MEKHA v THE MEDICAL BOARD OF NSW

DETERMINATION AS TO COSTS

1. The Tribunal considers that the appropriate order for costs is that the appellant pay half the costs of the NSW Medical Board.
2. The appellant sought an exemption from the English language requirements for International Medical Graduates (IMGs). The Board had previously advised that Dr Mekha had been granted a conditional registration subject to the condition that the position in which he worked for at Liverpool Hospital be supervised directly and that he was not to work out of hours or on call.
3. In a letter dated 18 December 2008 to Ms Maria Bayliss of the Liverpool Hospital (Annexure I to the affidavit of Dr Allison Reid of 26/08/09) the Medical Board advised that the appellant's English language proficiency as per the Board's requirement had been met. The letter was an in principle approval of the registration of Dr Mekha. The actual registration documents containing the conditions of registration were forwarded by the Board to the hospital under cover of letter dated 04 February 2009.

4. The statement in the letter of 18 December 2008 was incorrect. Of itself, the letter may have led to the belief of Dr Mekha that in refusing to allow him an exemption from the English language requirements for IMGs the Board had adopted an unfair approach and contributed to the termination of his employment with the Liverpool Hospital.
5. Dr Mekha's continuing employment as a Registrar at the hospital was supported by Dr French, the Head of the Cardiothoracic Unit at Liverpool Hospital. In evidence before the Tribunal, he testified to the adequate communication skills of Dr Mekha, and stated that in his opinion, Dr Mekha would be capable of competently working after hours including being on call as a Registrar at Liverpool Hospital.
6. The Tribunal in its reasons for determination stated that it did not consider it was for the Tribunal to substitute its determination for the determination by the Medical Board. The determination by the Tribunal does not prevent the appellant from seeking employment in a hospital situation subject to direct supervision. If the appellant did achieve a pass in the required English language test any conditions with regard to his employment could be varied so far as supervision is concerned.
7. The incorrect statement in the letter of 18 December 2008 may well have affected the determination of the hospital to support the continuation of employment of Dr Mekha. The Medical Board has submitted that the Tribunal ought to make the usual order as to costs, or in the alternative, in view of the letter of 18 December 2008 make the usual order as to costs save as to the costs of the appeal on 09 September 2009, in which instance the Board ought to have three quarters of its costs for that day.
8. The Tribunal has received a submission from Dr Mekha in which he states that he cannot afford to pay the costs of court because he is as at present, without a job. It is also stated in the letter that he is now a burden on the Australian community because he cannot talk English and is "not a safe doctor". Unfortunately, such a statement fails to appreciate that the Tribunal did not base its determination on any lack of ability by Dr Mekha as a medical practitioner. The Tribunal considered that it was not for the Tribunal to substitute its determination for the determination of the Medical Board that it was inappropriate in the circumstances that Dr Mekha be exempted from English language proficiency requirements for IMGs. The Tribunal refused the application of Dr Mekha that he be exempted from English language requirements.
9. In the circumstances, the Tribunal considers that the appropriate order for costs is that the appellant pay half the costs of the Medical Board in respect of the appeal. It is noted that the appellant represented himself at the hearing.

Dated: 9. 10. 09

A handwritten signature in black ink, appearing to read 'A.F. Puckeridge', written in a cursive style. The signature is positioned above the printed name and title.

Judge A.F. Puckeridge QC  
Deputy Chairperson