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IN THE SUPREME COURT  
OF NEW SOUTH WALES  
COMMON LAW DIVISION

HARRISON J

MONDAY 23 NOVEMBER 2009

**30077/09 – RICHARD FRANCIS GORMAN v. MEDICAL BOARD OF NEW  
SOUTH WALES**

**JUDGMENT** re application to strike out Statement of Claim

HIS HONOUR: These are proceedings originally commenced by Statement of Claim filed on 25 August 2009. The plaintiff is currently a suspended legally qualified medical practitioner formerly specialising in ophthalmology but more recently trained and practising as a general practitioner.

The defendant in the original Statement of Claim was named as the Medical Board of New South Wales. An application was made by the defendant by Notice of Motion filed on 23 September 2009 for orders pursuant to UCPR 13.4 to dismiss the plaintiff's claim upon the basis that it was frivolous or vexatious or disclosed no reasonable cause of action or was an abuse of the process of the Court.

The Notice of Motion also sought in the alternative an order pursuant to UCPR 14.28 that the whole of the plaintiff's Statement of Claim filed on 25 August 2009 be struck out upon cognate bases. That Motion comes before me today.

In the meantime, in anticipation of the plaintiff's application for relief today, the plaintiff filed his own Notice of Motion on 6 November 2009 in which he effectively abandoned the original Statement of Claim and sought leave to file an amended document to replace it.

As the transcript will reveal, in the events that occurred Dr Gorman was content for today's proceedings to relate to his proposed amended Statement

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of Claim and Mr Saidi of counsel was prepared to treat his original application as one dealing with that proposed amended document as if it had been filed.

The amended Statement of Claim sues not only the Medical Board of New South Wales as the first defendant but Professor Walter Glover as the second defendant and Mr Robert Kelly as the third defendant.

The burden of the relief sought by the plaintiff is that following a series of suspensions put in place by reason of a decision made by the Medical Board his medical practice and commercial activities related to it have gone into decline. In brief, Dr Gorman's ability to continue to finance premises he has acquired at Marrickville and to develop a medical practice of the sort he wishes to develop at and from those premises has understandably suffered following the suspensions to which he has been subject. He has incurred losses in accordance with leasing agreements with a company of whose obligations he is a guarantor, and these losses are said to be accruing at a substantial monthly rate.

It is clear from Dr Gorman's submissions before me today that there is, and remains, a significant methodological and medical disagreement between him and what I shall refer to as those administering conventional medicine in this state in ways that according to Dr Gorman have led to his being singled out for special and unfair treatment in the circumstances as he perceives them. At least one of the consequences, according to Dr Gorman, is that he has been suspended from practice as a result.

In attempting to summarise Dr Gorman's complaints in the circumstances in which he makes them it is to be observed that the foregoing was but a limited and clearly inadequate summary of all of the matters that Dr Gorman

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would wish to propound.

At the heart of his complaints, however, is a concern that his theory or hypothesis that recovery of vision in some affected people can be achieved with spinal manipulation and what he has described in his Statement of Claim as the "elucidation of the pathogenic mechanism of the said process by the internal 'Polynya Concept'" are not given proper regard.

Dr Gorman seeks damages from the defendants to cover the losses that have been suffered by him in the circumstances as he has described them.

Those losses are said to extend to capital losses associated with the forced sale of 5,000 shares in Primary Health Care Limited on 22 January 2009, loss of capital associated with the forced sale of 35,000 shares in that company on 10 March 2009, and losses associated with the forced sale of shares in IAG, presumably an unrelated company in which Dr Gorman had invested some capital which he was required to realise to cover losses as they occurred.

At the heart of the complaint made by Dr Gorman is his contention that the decision to suspend him made by the Medical Board on 5 December 2008 in circumstances where the defendants were acting pursuant to s 66 of the **Medical Practice Act 1992** was a decision made or which occurred as a result of bad faith on the part of the Medical Board and the other two defendants.

Although that contention is given lip service in the proposed amended Statement of Claim it is nowhere analysed or given content anywhere within the body of the document. The highest or closest the proposed amended Statement of Claim comes to explaining the notion of bad faith is to be found in what are described as particulars on page 5 of the document in which Dr

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Gorman, under a series of headings, describes what he considers were a disregard of his "legitimate medical philosophy" presumably by one or all of the defendants.

Those particulars are provided in a portion of the proposed amended Statement of Claim in which Dr Gorman contends that he was owed duties as a medical practitioner by the defendants in that they had a responsibility and duty of care to protect the reputation of the medical profession by acting in good faith so as to enhance, rather than detract from, the reputations of medical practitioners and that the defendants breached that duty of care due to their negligence in the performance of the processes which led to his suspension from practice.

Unfortunately when one has regard to Dr Gorman's so-called particulars explaining the disregard of his legitimate medical philosophy about which he complains, no adequate detail or explanation of those contentions is given. Instead Dr Gorman asserts bias in the conduct and administration of various processes to which he has been subjected in the course of either his accreditation or a review of it.

In all of the matters he lists Dr Gorman contends that the first defendant "acted with unreasonable bias and procedural unfairness" but does not give content to that allegation.

The second and third defendants are said to have acted in the same way as delegates pursuant to s 66 of the Act.

At the bottom of page 5 of the proposed amended Statement of Claim Dr Gorman asserts that "When considered respectively, the negligence of the defendants will become manifestly obvious because medical practitioners will

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be demoted in status due to ignorance of essential health care precepts which would allow them to take their rightful place in the new era of treatment of illness primarily in the controlling systems of body functions".

The Statement of Claim concludes with a contention that "the defendants by the bad faith of their actions as outlined above have alienated the plaintiff from the use and enjoyment of the property rented by him".

Section 189 of the **Medical Practice Act 1992** provides as follows:

**"189 Protection From Liability**

No matter or thing done or omitted to be done by a person as:

- (a) the Registrar, or
- (b) the Board, or
- (c) an Impaired Registrants Panel, or
- (c1) a Performance Review Panel, or
- (c2) an assessor, or
- (c3) an authorised person, or
- (d) a Committee, or
- (e) the Tribunal, or
- (f) any member of the Board, an Impaired Registrants Panel, a Performance Review Panel, a Committee or the Tribunal or a person acting under the direction of the Board, an Impaired Registrants Panel, a Performance Review Panel, a Committee or the Tribunal, or
- (g) nominal complainant for the purposes of clause 8 of Schedule 2,

if the matter or thing was done or omitted to be done in good faith for the purposes of executing this or any other Act, subjects the person personally to any action, liability, claim or demand".

Despite my urging, Dr Gorman was unable to direct my attention in any sufficient detail to any factual or legal basis why that section ought not to apply in the present case to all of the defendants.

According to the defendants the pleading in its proposed amended form, as in its original form, is deficient in several respects. The defendants stress that if Dr Gorman wished to maintain that any proceedings had been

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conducted in a procedurally unfair manner or that any determination made by the Board or the Medical Tribunal was invalid, whether for reasons of bias or otherwise, then such a challenge could or should be made by way of an appeal to the Court of Appeal or by way of some cognate application akin to prerogative relief.

The defendants contend that whilstsoever any decisions of the Medical Board or the Medical Tribunal stand, Dr Gorman is constrained by those decisions. Whether or not that is so, it does seem to me that there is nothing contained within the proposed amended Statement of Claim that indicates that the Board did not act in good faith so as to lose the benefit of the immunity given by s 189 of the Act. Ordinary principles of pleading, which I note in passing have extravagantly been ignored in the preparation of the document under consideration, require that matters such as lack of good faith, if alleged, should be properly pleaded and particularised by reference to the material facts and circumstances said to support them. That has not occurred in the present case.

As attracted as I am to the proposition that the plaintiff does not now have, and is unlikely ever to be able to formulate, any cause of action known to the law, so that the present proceedings should be struck out in whole, it seems to me that against the contingency that some pleading presumably with the benefit of very experienced legal practitioners could be formulated in a way that neutralises the significant and presently fundamental criticisms of the current document to which I have referred, the preferable course is to strike out the whole of the pleading currently under review.

To that extent I consider that in the circumstances it is appropriate to

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make the following orders:

1. I grant leave to the plaintiff to file in Court an Amended Statement of Claim in the form annexed to the affidavit of the plaintiff filed in Court on 6 November 2009.

2. I strike out the Amended Statement of Claim pursuant to UCPR 14.28 upon the basis that it discloses no reasonable cause of action and is, in addition, a document that has a tendency to cause prejudice, embarrassment or delay in the proceedings.

3. I order the plaintiff to pay the defendant's costs of and incidental to this application.

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