

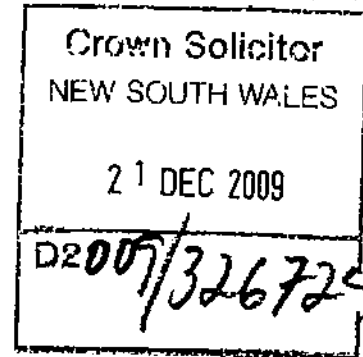
IN THE SUPREME COURT  
OF NEW SOUTH WALES  
COURT OF APPEAL

CA 40344/09

TOBIAS JA

Monday 7 De

ATL 2009/326724



**RICHARD FRANCIS GORMAN v MEDICAL BOARD OF NEW SOUTH WALES**

**Judgment on referral**

- 1 **TOBIAS JA:** Dr Richard Gorman has been the subject of a suspension of his right to practice medicine by the Medical Board under s 66 of the *Medical Practice Act 1992* (the Act) since December 2008. In July 2009 that suspension was confirmed by the Medical Tribunal and in September of this year Dr Gorman lodged an appeal against that decision. On 9 November last Justice Ipp, sitting as the referral judge, expedited that appeal and it has now come to pass as a consequence of some cases falling out of the February list that the appeal will be listed for hearing for one day during February next. As an expedited appeal one can reasonably assume that any judgment of the Court, if not given at the time of the hearing, will be given shortly thereafter.
- 2 Dr Gorman filed a motion on 27 November last returnable today seeking an order that his suspension from medical practice under s 66 of the Act be stayed pending the determination of his appeal from the Tribunal by this court. He has sworn two affidavits in support of that application one of which he handed up today and which was sworn today and to which is annexed a thirty-seven paragraph submission in support of his application. I have read that document carefully and in essence what Dr Gorman seeks is the right to practice for the next two months for the purpose of earning income so as to enable him to pay the rent that is payable in respect of the premises at Marrickville where he carried on his practice

before he was suspended in December 2008 and which is referred to as the Spine and Longevity Medical Centre. He informs me that the rental is currently up-to-date but that he is fast running out of funds and that as the rental is approximately \$1,000 per week, it is unlikely that he will be able to generate that amount of money over the next two months to pay the rent unless he is able to earn an income which presently he is unable to do because of his suspension.

- 3 His concern is that his lease will be terminated as a consequence of which, if his appeal is successful, he will no longer have the premises at Marrickville where he had previously carried on his practice and where his patients, who he says have been loyal to him, had previously come for treatment. Dr Gorman indicated to me that the particular procedure that he practices of spinal manipulation is one that could be equally and successfully practiced by chiropractors and which would apparently have the same beneficial effect on his patients.
- 4 However, the problem is that if he practices that particular procedure as a medical practitioner his patients have the benefit of a refund of his fee from Medicare whereas if the procedure is conducted by a chiropractor there is no such refund. Therefore his former patients are reluctant to undergo treatment at the premises at Marrickville conducted by a chiropractor. However, one would have thought that depending upon the extent of the pain or otherwise that those people are suffering, they maybe prepared to be treated by a chiropractor and to pay for the privilege if they are informed that it will only be for a short period in the event that Dr Gorman is successful in his appeal.
- 5 Furthermore it appears that at the present time Dr Gorman has been reluctant to approach his landlord with a view to obtaining, in effect, a rent holiday for the next two months or so until his appeal is heard and determined; whether such an approach to his landlord would be successful one can only speculate.

- 6 A further possibility is that Dr Gorman may be able to obtain some assistance from members of his family although I can understand his reluctance to do so. However, as a matter of principle, given that parents support their children in their time of need, sometimes it is not inappropriate in times of a parents' need for the children to support that parent and maybe this is one of those occasions although that is entirely a matter for Dr Gorman.
- 7 A further possibility is that Dr Gorman might be able to licence other health practitioners to occupy the premises for the next two or three months in order to generate sufficient income to pay the rent. If the premises were offered on a short term basis at an amount that would be sufficient to cover the rent only, then he maybe successful in achieving the result that he seeks to achieve by this motion, namely, to generate enough income to continue to pay the rent on the Marrickville premises.
- 8 Given that the Court has indicated to Dr Gorman that his appeal will definitely be heard in February which is only two months hence and given the reason behind this application which is in essence to enable Dr Gorman to earn sufficient income to enable him to keep up the rent on the Marrickville premises, I do not consider it would be a proper exercise of my discretion at this point of time to stay the suspension that has been in place for so long which would then entitle Dr Gorman to conduct his medical practice as he sees fit including the carrying out of a procedure which apparently the Medical Tribunal, rightly or wrongly, regards as inappropriate.
- 9 For those reasons I am not prepared to accede to Dr Gorman's application and his notice of motion filed on 27 November 2009 is dismissed. I make no order as to costs.

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I CERTIFY THAT THIS AND THE 2  
PRECEDING PAGES ARE A TRUE COPY  
OF THE REASONS FOR JUDGMENT HEREIN  
OF THE HONOURABLE JUSTICE TOBIAS

  
Associate

7 December 2009  
Date