

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Medical Board of Australia v Bird (No.2)* [2019] QCAT
149

PARTIES: **MEDICAL BOARD OF AUSTRALIA**
(Applicant)
v
PHILIP BIRD
(Respondent)

APPLICATION NO/S: OCR130-14

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 12 June 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Judge Sheridan

Assisted by:

Dr E Chew

Dr D Wardle

Mr M Halliday

ORDERS: **The tribunal makes no further orders under s 196(2)
of the *Health Practitioner Regulation National Law
(Queensland)*.**

CATCHWORDS: PROFESSIONS AND TRADES – HEALTH CARE
PROFESSIONALS – MEDICAL PRACTITIONERS –
DISCIPLINARY PROCEEDINGS – PROFESSIONAL
MISCONDUCT AND UNPROFESSIONAL CONDUCT
– DEPARTURE FROM ACCEPTED STANDARDS –
where the registrant continued to practice subject to the
terms of an undertaking in the period between the hearing
and the Tribunal’s decision – whether any conditions still
required to be imposed

Health Practitioner Regulation National Law

(Queensland), s 196

Queensland and Civil Administrative Act 2009 (Qld),

s 32

REPRESENTATION:

Applicant: A Forbes, instructed by Lander and Rogers Lawyers

Respondent: K Mellifont QC, instructed by Moray and Agnew

APPEARANCES:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

REASONS FOR DECISION

- [1] The Tribunal gave its substantive decision in this matter on 26 April 2019. In giving its decision, the Tribunal indicated that, if an order had been made at or about the time of the hearing, the conditions as proposed by the parties, which were attached to the Tribunal's reasons as Attachment A, would have been appropriate.
- [2] The Tribunal commented that the conditions were not dissimilar to the terms of the undertaking which had been given by Dr Bird to the Medical Board of Australia (**Board**) on 23 October 2013. The conditions in the undertaking were directed to ensuring Dr Bird obtained a second opinion for certain patients prior to prescribing Attention Deficit Hyperactivity Disorder (**ADHD**) medication (paragraphs (a) to (e) of the proposed conditions contained in Attachment A (**the second opinion conditions**)).
- [3] In giving its decision, the Tribunal noted that the proposed conditions, as detailed in paragraphs (f) to (k) of Attachment A, contained conditions not incorporated in the terms of the undertaking, namely the imposition on Dr Bird of an additional obligation of engagement in mentoring (**the mentoring conditions**).
- [4] Given the unfortunate delay in the giving of the Tribunal's decision, for which the Tribunal had apologised, prior to giving its decision the Tribunal asked the parties whether Dr Bird had, in the intervening period, continued to practice subject to the terms of his undertaking and what, if any, conditions the parties considered were now required.
- [5] In correspondence to the Tribunal, the parties confirmed that Dr Bird had continued to practice subject to his undertaking; though the solicitors for Dr Bird requested that the Tribunal receive additional material before proceeding to determine whether to now impose any conditions. The Board opposed that request.
- [6] The Tribunal determined it was appropriate to give its decision but, in doing so, made directions permitting the parties to provide to the Tribunal further evidence and submissions directed to the question as to whether any conditions, including conditions as to mentoring, should now be imposed.
- [7] A very substantial affidavit was filed by the solicitor for Dr Bird sworn 24 April 2019 attaching the correspondence between Dr Bird and the Board over the intervening two year period indicating his substantial compliance with his undertaking. It is clear by reference to that affidavit that, during the intervening two year period, Dr Bird had continued to obtain second opinions as required by the undertaking, had continued to maintain a second opinion's register and had continued to provide monthly updates to the Board. In addition, the affidavit detailed Dr Bird's participation in peer review activities.
- [8] In its submissions dated 17 May 2019, the Board accepted that the second opinion conditions need not be imposed by the Tribunal, particularly given that the parties

had previously agreed a two year review period in relation to the continuance of those conditions was appropriate and that period had now expired.

- [9] A question remained as to whether the proposed mentoring conditions had been satisfactorily fulfilled and whether some mentoring conditions should still be imposed.
- [10] Further affidavits were filed by the solicitor for Dr Bird and Dr Bird providing additional information regarding the nature and extent of his participation in the peer review activities. In his affidavit, Dr Bird detailed his participation in extensive education, including attendance at numerous conferences including international conferences, and his regular participation in peer review activities. Dr Bird deposed to his engagement being commensurate with, if not exceeding, that envisaged by the mentoring which had been proposed by Professor Coghill in his letter to the solicitors for Dr Bird dated 26 March 2018. The letter is annexed to the affidavit of Ms Houston dated 24 April 2019.
- [11] In the period from 2017 to date, Dr Bird had attended and participated in excess of 30 peer review meetings.
- [12] Doctors Morgan and Guha, consultant psychiatrists who had participated in peer group meetings with Dr Bird, in separate letters attached to the affidavit of Ms Houston dated 24 May 2019, stated that the purpose of the meetings is to provide support and mentoring to the participating members of the group. Both referred to the focus of the group meetings being on complex patient matters involving patients with ADHD and comorbid psychiatric and/or physical conditions and the management of those cases in accordance with accepted guidelines.
- [13] In referring to Dr Bird's participation in those meetings, both Dr Morgan and Dr Guha considered that Dr Bird is an active contributor, is open to feedback and actively reflects on his management of patient cases based on the group feedback.
- [14] Professor Coghill, in his letter dated 22 May 2019, also attached to the affidavit of Ms Houston dated 24 May 2019, says that the peer review activities in which Dr Bird has engaged would have been at least the functional equivalent to the mentoring as envisaged by him in the mentoring plan referred to in his affidavit sworn 21 March 2017.
- [15] In further submissions dated 30 May 2019, the Board acknowledged that:
- (a) The Peer Group Meetings that the Respondent has participated in are sufficient to now satisfy what would have been the Respondent's mentoring requirements; and
 - (b) The objectives of mentoring have been satisfied even though the Respondent has not received what would have been the mentor's report at the conclusion of the mentoring.
- [16] In those submissions, on behalf of the Board it was stated that in light of the further evidence annexed to the Affidavit of Ms Houston filed 24 May 2019, the Board "does not oppose the Respondent's submission that a period of mentoring is no longer required."

- [17] In those circumstances, it is the view of the Tribunal, guided by the assessors, that it is not necessary for the Tribunal to now impose any conditions, including any conditions as to mentoring, on the registration of Dr Bird.
- [18] In reaching this conclusion, the Tribunal is not proceeding on the basis that the previous undertaking will remain in place. Indeed, it is proceeding on the basis that it will come to an end.
- [19] Given the view of the Tribunal, no further orders are required to be made by the Tribunal under s 196(2) of the *Health Practitioner Regulation National Law (Queensland)* in this matter.