

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Emechete v Medical Board of Australia* [2022] QCAT 15

PARTIES: **BENEDICT EMECHETE**
(applicant)

v

MEDICAL BOARD OF AUSTRALIA
(respondent)

APPLICATION NO/S: OCR349-21

MATTER TYPE: Occupational regulation matters

DATE OF DECISION: 23 December 2021

DATE OF REASONS: 27 January 2022

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Judge Allen QC, Deputy President

ORDERS: **The application to stay a decision is dismissed, pursuant to section 47 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).**

CATCHWORDS: PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – LICENCES AND REGISTRATION – APPEALS AND APPLICATIONS FOR ORDER DIRECTING REGISTRATION – where the applicant medical practitioner applies to review a decision of the Medical Board of Australia to suspend the applicant’s registration – whether the decision of the Board should be stayed pending the determination of the application

PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – HEALTH PRACTITIONER NATIONAL LAW GENERALLY – co-regulatory system for the regulation of registered health practitioners in Queensland constituted by the National Law and provisions of the *Health Ombudsman Act 2013* (Qld) – applicability of provisions of the *Health Ombudsman Act 2013* (Qld) to applications to review decisions of National Boards affecting registered health practitioners

Health Practitioner Regulation National Law (Queensland), part 8, division 7
Health Ombudsman Act 2013 (Qld), s 10, s 94, s 96, s 97,

s 98, s 99, s 100, part 10, divisions 5 and 6
Queensland Civil and Administrative Tribunal Act 2009
 (Qld), s 47, s 122

APPEARANCES & REPRESENTATION:

Applicant: MinterEllison Lawyers

Respondent: Appearance not required

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

Introduction

- [1] On 23 December 2021, the applicant, Dr Benedict Emechete, filed an application to review a decision of the Medical Board of Australia (Board) on 25 November 2021 to take immediate action, pursuant to the provisions of part 8, division 7 of the Health Practitioner Regulation National Law (Queensland) (National Law)¹, and suspend the applicant's registration as a medical practitioner (the review application). On the same date, the applicant filed an application to stay the decision of the Board (the stay application).
- [2] Later on 23 December 2021, I made an order dismissing the stay application pursuant to s 47 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act) (the decision). I also made directions that the review application be listed for a directions hearing on 28 January 2022, anticipating that the Tribunal would then make orders for the expeditious hearing of the review application, whether by consent of the parties or otherwise. In the meantime, the respondent was directed to comply with its obligation to file material pursuant to s 21(2)(b) of the QCAT Act.
- [3] Not content with wasting the finite resources of the Tribunal by making the stay application, the applicant has since requested, pursuant to s 122 of the QCAT Act, written reasons for the decision to dismiss the stay application.

Reasons for the decision

- [4] The provisions of the National Law and the *Health Ombudsman Act 2013* (Qld) (HO Act) create a co-regulatory system for the regulation of registered health practitioners in Queensland. One of the consequences of the legislative scheme is that provisions of both pieces of legislation may be applicable to litigation in the Tribunal of applications to review decisions of National Boards affecting registered health practitioners. The inter-relationship between both pieces of legislation is

¹ Division 7 of part 8 of the National Law is headed "**Immediate Action**". Provisions of that division relevant to the Board's decision included s 155 which provides a definition of "immediate action", s 156 which provided the power to take immediate action after the show cause process mandated by s 157, and s 158, pursuant to which the applicant was given notice of the Board's decision.

recognised in s 10 of the HO Act generally and, more specifically as regards the jurisdiction of the Tribunal to review appellable decisions by National Boards and the orders the Tribunal may make in such proceedings, in ss 94 and 96 of the QCAT Act. Other provisions of the HO Act provide for the constitution of the Tribunal when hearing and determining applications to review decisions of National Boards affecting registered health practitioners², for some types of such proceedings to be held in private³, the power of the Tribunal to exclude witnesses from the hearing room during such proceedings⁴, and the requirement that the Tribunal be assisted by assessors in hearing and determining such proceedings⁵.

[5] Of particular relevance to the decision, s 100 of the HO Act provides as follows:

100 No stay of decision to take immediate action

(1) **This section applies if a health practitioner applies for a review of –**

- (a) a decision of the health ombudsman to take immediate action under part 7; or
- (b) **a decision of a National Board to take immediate action under the National Law, part 8, division 7, or**
- (c) a decision of the health ombudsman to issue a prohibition order under part 8A.

(2) **QCAT must not grant a stay of the decision.**

(emphasis added)

[6] The decision of the Board to take immediate action and suspend the applicant's registration was made pursuant to the provisions of the National Law, part 8, division 7. Section 100 of the HO Act prohibited the Tribunal from granting a stay of such decision. Accordingly, the stay application was misconceived and was dismissed pursuant to s 47 of the QCAT Act.

Concluding comment

[7] It is surprising and disappointing that the applicant's legal representatives failed to advert to the terms of s 100 of the HO Act before filing the stay application. It is also surprising that written reasons were requested. I would have thought that an immediate summary dismissal of an application pursuant to s 47 of the QCAT Act would have given a practitioner pause to reflect upon why such an order might be made, to have a closer look at the applicable legislation, or even chat to a colleague, so as to discern the reason, rather than requiring the Tribunal to fill the gap in their knowledge of the law. Such an approach would also have avoided the professional embarrassment that might follow publication of these reasons.

² HO Act, s 97.

³ HO Act, s 98.

⁴ HO Act, s 99.

⁵ HO Act, part 10, divisions 5 and 6.