

MEDICAL BOARD OF AUSTRALIA V PEARSE (NO. 2) [2018] QCAT 24

MARCH 27, 2018 | HEALTH SECTOR

Consideration of an application by the registrant for costs, some portion on an indemnity basis. Delivered on 1 February 2018.

FACTS

On 4 November 2015, the Tribunal dismissed a referral by the Medical Board (the Board) in which it alleged that the respondent had behaved in a way that constituted professional misconduct.

The respondent submitted that he should be entitled to costs based upon the findings of the Tribunal in its substantive decision, including that there was an unlikelihood of the event having occurred as alleged by the patient.

DECISION

Section 193 of the *Health Practitioner Regulation National Law* (the National Law) mandated that the Board refer the matter to the Tribunal if it reasonably believed that a respondent had behaved in a way that constituted professional misconduct. His Honour, Horneman-Wren J, held that there was no finding in the substantive proceedings that, at the time of referring the matter to the Tribunal, the Board did not hold such a belief or that any such belief was not, or could not, reasonably be held.

While the respondent had sworn an affidavit setting out his version of events in July 2013 (the month prior to the referral of the disciplinary matter to the Tribunal) Horneman-Wren J found that did not “*mean that the Board did not or could not, have the relevant belief at the time of making the referral*”.[1] The fact that the Tribunal essentially accepted the respondent’s version of events did not alter that.

Submissions made by the respondent identified what he considered to be opportunities for the Board to have considered that it ought not persist with the referral. Those submissions were not accepted. The Tribunal found that whether the allegations were inherently implausible was a matter to be determined upon consideration of all the evidence. The objective analysis of the allegations and the careful and critical examination and evaluation of the evidence occurred in the course of the proceedings in the Tribunal, including the full hearing of all relevant evidence as contained in the Tribunal’s reasons.

His Honour held “*the fact that after an investigation it is understood that the practitioner’s response to the allegations is complete denial, and even with some independent evidence supportive of the practitioner’s position, does not mean that the Board cannot hold the relevant belief requiring it to refer the matter to the Tribunal. Nor does it mean that it should at some point desist in those proceedings*”.[2]

ORDER

His Honour was not satisfied that the interests of justice required the making of an order that the Board pay any part of the respondent's costs.

No order for costs was made, consistent with the position outlined in section 100 of the QCAT Act.^[3]

[1] See [18]

[2] See [22]

[3] That each party to a proceeding must bear the party's own costs of the proceeding.

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