

CASE REVIEW: ZAPHIR ATS HEALTH OMBUDSMAN [2017] QCAT 193

AUGUST 3, 2017 | HEALTH SECTOR

Delivered on 30 May 2017

Facts

Mr Zaphir provided health services under the business name 'Dynamic Therapies'. Mr Zaphir was not a medical practitioner and had previously been convicted for holding himself out as such, and for offences involving prescribing restricted drugs.

The complaint related to Mr Zaphir's clinical treatment of Mr Ian Booth (now deceased) for a cancerous tumour growing out of Mr Booth's right eye. It was alleged that Mr Zaphir had represented to Mr Booth that he could treat and cure Mr Booth's cancerous growth through the use of non-traditional medicine.

Following receipt of the complaint, the Health Ombudsman decided to take immediate action by issuing an Interim Prohibition Order (IPO) pursuant to section 68 of the *Health Ombudsman Act 2013* (Qld) (HO Act). The terms of the IPO prevented Mr Zaphir from "*employment (paid or otherwise) in a clinical or non-clinical capacity which relates to the provision of any health service*".

Mr Zaphir applied to the Queensland Civil & Administrative Tribunal (the Tribunal) to have the immediate action decision reviewed. As the Tribunal has no power to stay the making of such an order, it was noted that the approach taken by the Tribunal in immediate action matters is to progress applications to a hearing as quickly as possible. In this case, however, there had been significant delay.

Section 94 of the HO Act gives the Tribunal jurisdiction to review the decision by a Health Ombudsman to issue an IPO. That review is to proceed as a review of a decision under the *Queensland Civil & Administrative Tribunal Act 2009* (Qld) (QCAT Act).

The terms of section 94 of the HO Act, read in conjunction with section 20(2) of the QCAT Act, make it clear that the review by the Tribunal is to be conducted as a full de novo hearing. The purpose of the review is to produce the correct and preferable decision. The Tribunal can

confirm, amend, set aside or substitute the decision or return the matter for reconsideration, with such directions as the Tribunal considers appropriate.^[1]

Being a fresh hearing on the merits, the Tribunal must make its decision applying the test prescribed by section 68 of the HO Act. The Tribunal must decide whether it is satisfied, on reasonable grounds, that because of the practitioner's conduct or performance they pose a serious risk to persons and that it is necessary to take immediate action in the form of a prohibition from practising to protect public health or safety.

Decision

In summary, it was alleged that Mr Zaphir had advised Mr Booth that:

1. He could cure his cancer without surgical intervention and the tumour would drop off;
2. The tumour was coming out to the front and he could not see anything attached at the back; and
3. To stay away from modern medicine and follow his treatment.

Mr Booth had been diagnosed in February 2015 with "*squamous cell carcinoma on his right lacrimal duct*". At the time of diagnosis, he was advised the tumour could be successfully removed surgically but the operation would result in a loss of his right eye and some of the bone surrounding his eye socket. Mr Booth refused surgery on the tumour or any other form of conventional treatment and was self-administering black salve on the tumour.

From mid 2015 until the end of 2016, Mr Booth received treatment from Mr Zaphir. That treatment largely involved infusions of vitamin C and the use of black salve (which had been prescribed and supplied by someone other than Mr Zaphir). Mr Zaphir had also organised and interpreted the results of tests and scans. By January 2016, the tumour had grown to cover more than half of Mr Booth's face and on 26 February 2016, Mr Booth died in the Redcliffe Hospital.

On behalf of the Health Ombudsman evidence was given by Mr Booth's niece, Mrs McIntyre, who was a nurse and Mr Booth's former de facto partner.

The evidence given by Mr Zaphir was that at no stage did he advise Mr Booth to cease receiving treatment from a registered medical practitioner. Mr Zaphir described his role as complimentary to existing medical practitioners. He denied stating that he could cure cancer but indicated that he did advise Mr Booth that sometimes the treatment he provides can assist and compliment the treatment provided by the client's treating doctors.

During cross-examination, some time was spent on the decision on the part of Mr Booth to use black salve. Mr Zaphir sought to distance himself from that treatment and stated that he never used it, advised Mr Booth that he considered it to be dangerous and suggested that Mr Booth at least stop taking it internally. The question was put to Mr Zaphir why he did not immediately contact Mr Booth's treating practitioner when he became aware that Mr Booth was using such a dangerous substance. The Tribunal noted that:

"From his answers it is clear that Mr Zaphir had no regard for Dr Power and Dr Power was simply used as a way for him to obtain any necessary tests or referrals including scans".

The Tribunal found Mr Zaphir to be an unhelpful, evasive witness and a person who was willing to give false or certainly misleading evidence. The Tribunal noted that in his affidavit, Mr Zaphir was very careful to use the word "*client*" whereas in giving evidence before the Tribunal, he most often used the expression "*patient*". Despite oral statements and evidence that he was not a doctor and had not used the term "doctor" or "chiropractor" for the last five or six years, he told a journalist conducting a covert operation for *A Current Affair* that he was a chiropractor and a doctor of integrated medicine.

It was accepted that Mr Booth had rejected conventional medicine to treat his cancer and had decided to use alternative therapies, including black salve. The Tribunal found, however, that Mr Zaphir had led Mr Booth to believe that if he followed his protocols and treatment practices, Mr Booth's cancer could be cured. In this regard, it was noted in evidence that Mr Booth had indicated that he was encouraged by the spread of the growth of the cancer over his face saying that, consistent with Mr Zaphir's advice "*it was an internal thing that was gradually coming out of his head and would drop off*".

Orders

The Tribunal was satisfied that Mr Zaphir poses a serious risk to patients and that immediate action by way of a prohibition order was necessary to protect public health and safety.

[1] See paragraphs [10] - [12]

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