

MEDICAL TRIBUNAL OF NEW SOUTH WALES

DEPUTY CHAIRPERSON: JUDGE COOPER

MEMBERS: DR S MOREY
DR D CHILD
MRS J ELLARD

MONDAY 7 SEPTEMBER 1998

IN RE DR RON S LALJI AND THE MEDICAL PRACTICE ACT

JUDGMENT

HIS HONOUR: This is an appeal by Ron S Lalji under s 17 of the Medical Practice Act 1992 against the decision of the Medical Board made on 3 June 1998 refusing his application for registration as a medical practitioner. The facts are set out in the affidavit of Mr A E Dix sworn on 31 August 1998 and also in the evidence of the appellant given before this Tribunal.

The appellant was born in Australia and left here with his parents as a very young child. They first went to the United Kingdom and ended up in Canada where the appellant attended high school and university. He has retained his Australian citizenship.

He attended the Medical Faculty of the University of Alberta and obtained a Bachelor of Medical Science Degree in 1992 and a Doctor of Medicine Degree in 1993. In 1993 and 1994 he did rotating internship at the St Thomas Campus of the Summer Health Systems in Akron, Ohio, USA. From 1994 to 1996 he did a residency in internal medicine at the Akron City Campus of the Summer Health Systems in the same city. In 1997 and January 1998 he worked as a locum tenens in medical practices in Alberta including in rural areas.

The appellant since 17 January 1996 has been admitted as a licentiate to the Medical Council of Canada and on the

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Canadian Medical Registrar. Since 12 December 1996 he has been registered with the College of Physicians and Surgeons of Alberta.

Early this year the appellant came to Sydney to enrol in the Master of Health Law Program at the University of Sydney. The course commenced in March 1998 and lasts approximately eighteen months. The appellant attends lectures between 6pm and 8pm three nights per week and he estimates that the reading requirements occupy some thirty-five hours per week. He has applied for registration as a medical practitioner in New South Wales essentially to enable him to work on a part-time basis so that he can maintain his clinical skills and also so that he can earn some money.

The appellant gave evidence that he intends to sit for both parts of the Australian Medical Council examinations ultimately. His first priority is to complete the course in Master of Health Law and also to work part-time in medicine. He could undertake such part-time work at weekends or in the morning or at night.

By letter dated 22 May 1998 the appellant made his formal application for registration. In that letter he said, amongst other things, "it is my wish to work on a limited basis, less than 12 hours a week, while completing my law studies. I intend to take the AMC exams in the future".

"If I'm unable to maintain my skills and gain further experience in the months leading up to the exam I would be at a severe disadvantage during the examinations. This is ironic since non-Australians are afforded such

opportunities."

He later says, "Furthermore, given that the AMC exam is only offered twice a year and given that I only wish to practice on a limited basis, I feel that my request for conditional registration at this time is reasonable."

With that letter the appellant enclosed details of his qualification and experience in medicine as well as supporting documentation and references. The Registration Committee to which the New South Wales Medical Board has delegated its power to register doctors considered the application on 3 June 1998 when it resolved as follows.

"1. To decline Dr Lalji's application for registration as he is not prima facie eligible for registration.

2. That in order for Dr Lalji to be eligible for registration he was required to pass the MCQ component of the AMC examinations and the Committee may then consider an application under its area of need policy.

3. To advise Dr Lalji of his rights of appeal under the Medical Practice Act."

By letter dated 10 June 1998 the New South Wales Medical Board advised the appellant of its decision and it is from this decision that the present appeal is brought. It is now necessary to consider the prerequisites for registration.

Relevant to the facts of this case there are two classes of prerequisites. One is provided under s 4 and the other under s 7 of the Medical Practice Act. S 4(1) of the Act provides "A person is entitled to be registered as a medical practitioner if the person has recognised medical qualifications and has successfully completed a period of

internship or supervised training as required by the Board."

The term "recognised medical qualifications" is achieved if the person is a graduate of a medical school accredited by the Australian Medical Council or has successfully completed examinations held by that Council for the purposes of registration as a medical practitioner.

The Medical School of the University of Alberta is not a medical school accredited by the Australian Medical Council. Furthermore, the appellant has not successfully completed examinations held by the Australian Medical Council, nor has he completed a period of internship or supervised training as required by the Board.

Accordingly, the appellant does not satisfy the requirements of s 4 of the Act and is therefore not entitled to registration under that section. Subparagraph (1) of s 7 of the Act empowers the Board to register a person as a medical practitioner under one or more of seven stated circumstances and may impose such conditions on that registration as the Board thinks appropriate. Those circumstances are set out in paragraphs (a) to (g) inclusive and it is proposed to deal with each in turn.

Paragraph (a) states "A person who is a graduate of medicine from an institution which is not accredited by the Australian Medical Council may be registered on a temporary basis to enable the person to undertake a period of post-graduate training in medicine approved by the Board."

The appellant here is not undertaking a period of post-graduate training in medicine, nor does he intend to. Consequently this paragraph gives him no assistance.

Paragraph (b) states "A person who is a candidate for

examination held by the Australian Medical Council and has been approved by that Council to undertake a period of supervised training approved by the Board before sitting for the examination may be registered for the purpose of enabling the person to undertake that training."

The appellant in this case is not a candidate for such an examination nor has he been approved by the Australian Medical Council to undertake the period of supervised training provided for in that paragraph. Consequently he gains no help from that paragraph.

Paragraph (c) states "A person may be registered for the purpose of enabling the person to fill a medical, teaching or research position if the person has qualifications that the Board recognises for that purpose."

At the hearing of this matter this morning the appellant tendered two letters. These are dated respectively 24 August and 2 September 1998. The letter of 2 September 1998 merely acknowledges an application made by the appellant for a part-time position as Registrar in Emergency Medicine or Internal Medicine at Manly Hospital and states, "Should you be successful in obtaining registration with the New South Wales Medical Board we would certainly be interested in interviewing you for either or both of the above positions." This letter of course does not refer to a medical, teaching or research position.

The other letter is from Professor Freedman, the Associate Dean of the Central Clinical School of the University of Sydney. This letter reads, "Thank you for your inquiry about tutoring in the Graduate Medical Program and for sending me your curriculum vitae. I would be happy

to offer you an honorary position as a tutor in our Clinical Examination Skills Tutorial stream for Graduate Medical Program Year 1 for the remainder of the second semester. This will involve one ninety minute tutorial per week and some preparatory time seeing patients who will be used in the tutorial."

The letter goes on to say, "In 1999 I would like you to take a Communications Skills tutorial group for either GMP1 or 2. In addition your interest and skills in the area of law and ethics in medicine will be useful for contributing to some sessions for our Graduate Medical Program and also undergraduate program students that cover these issues. I will discuss the details of these sessions at a later date.

I understand you've applied to the Medical Board of New South Wales for registration which I feel would be important for you to obtain in order to fully utilise your skills in our clinically-based teaching program."

If the appellant were to be granted conditional registration under this paragraph it would be limited to the actual time spent in teaching this course and would not allow him the range of practice he desires. Furthermore, the Board has not had the opportunity to consider any application under paragraph (c) as this letter was produced only this morning. It is of course to be noted that the position offered is an honorary one as tutor and whether this would satisfy the appellant's requirements remains to be seen.

Paragraph (d) provides "A person may be registered for the purpose of enabling an unmet area of need to be met if the Board is satisfied that the person has suitable

qualifications and experience to practice medicine in that area of need."

The appellant has not applied for a position which enables an unmet area of need to be met. Furthermore, there is no evidence before this Tribunal that an area of unmet needs exists which would satisfy the appellant's requirements.

Paragraph (e) provides "A person may be registered if the Board is satisfied that he or she has specialist qualifications and experience in medicine recognised by the relevant Australian specialist college or institution and registration is for the purpose of enabling him or her to practice within that specialty."

The appellant here has no such specialist qualifications.

Paragraph (f) provides "A person may be registered if the Board is satisfied that he or she has specialist qualifications and experience in medicine obtained outside Australia being qualifications which are not recognised by the relevant Australian specialist college or institution and registration is for the purpose of enabling him or her to undergo further specialist training or examination before being assessed for recognition by that college or institution."

The appellant here has no such specialist qualifications. Furthermore, he does not seek registration to enable him to undergo further specialist training or examination. Consequently paragraph (f) does not apply.

Paragraph (g) states "A person may be registered on a temporary basis if the Board is satisfied that it is in the

public interest to do so."

This paragraph generally speaking applies in the case of a practitioner from overseas with some special skill who is to demonstrate that skill on patients in New South Wales to local practitioners as part of the training of local practitioners. Of course the paragraph is not limited to that particular situation. However before applying it the Tribunal has to be comfortably satisfied on the balance of probabilities that it is in the public interest for this appellant to be registered on a temporary basis.

Having regard to the total of the evidence this Tribunal is not so satisfied. Accordingly, this Tribunal is not satisfied that the appellant has brought his case under any of the paragraphs in subs (1) of s 7 of the Act.

It follows that the appeal is dismissed and the decision of the Board is confirmed. This Tribunal would, however, point out that its decision is based upon the evidence that has been presented before it and its decision is not to be taken as a bar to any further application for registration which may be made by the appellant to the Medical Board for registration based upon different or fresh evidence.

If the appellant in the future presents evidence before the Medical Board which brings him under one or more of the paragraphs in s 7(1) of the Medical Practice Act then it will be open to the Board to deal with that application on its merits.

Do you seek any other orders?

SCAHILL: No, your Honour.

HIS HONOUR: Not seeking any orders for costs?

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SCAHILL: No, your Honour.

HIS HONOUR: Well as no orders for costs are sought, no order for costs will be made. Do you follow that, Mr Lalji?

APPELLANT: Yes, I did.

HIS HONOUR: We've said you've failed this time but you're not being barred for all time from making applications.

APPELLANT: All right, thank you.

HIS HONOUR: But we would suggest that you carefully think through any future application you might make. The two letters you've got, were we given the originals?

APPELLANT: No.

HIS HONOUR: We were only given copies so you've got the originals?

APPELLANT: I have the originals.

HIS HONOUR: You don't want those copies back, do you?

APPELLANT: No, not the copies.

HIS HONOUR: Thank you.

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