

Health Insights

Soutorine and The Medical Board of Australia [2020] **WASAT 5**

Facts

Mikhail Soutorine is a medical practitioner (**the practitioner**). In November 2019, the Australian Health Practitioner Regulation Agency (**AHPRA**) on behalf of the Medical Board of Australia (**the Board**) wrote to the practitioner and advised him that the Board had decided to take immediate action under section 156 of the *Health Practitioner Regulation National Law (WA) Act 2010* in the form of a suspension of his registration as a medical practitioner. Section 156 of the National Law allows the Board to take immediate action in relation to a practitioner if it reasonably believes that because of the practitioner's conduct, performance or health, the practitioner poses a serious risk to persons.

The Board decided to suspend the practitioner's registration on the basis that there was objective circumstances supporting a belief that the practitioner's performance of cosmetic surgical procedures on two patients was deficient with respect to the following matters:

1. appropriate counselling of potential and actual risk and outcome of the procedures performed
2. the premises on which the procedure was performed
3. the duration and timing of the procedure
4. pre, intra and post-surgery management, and
5. surgical outcome, as both patients suffered complications and/or un-aesthetic outcomes and adverse outcomes as a result.

The practitioner applied to the State Administrative Tribunal for a stay of the immediate action.

The practitioner argued that the subject matter of the notifications are an insufficient basis for the Board to have formed a reasonable belief that he posed a serious risk to persons and that the suspension of his registration was necessary to protect public health or safety.

The practitioner also volunteered undertakings which he submitted were sufficient to protect public health or safety from the risk identified by the Board. The undertakings were as follows:

1. an undertaking not to conduct any abdominoplasty procedures within any medical facility of a lower standard than a Day Hospital Class B facility and without the use of sedation/general anaesthetic

2. an undertaking not to conduct any liposuction procedures involving the removal of more than 1000ml of fat within Western Australia in any medical facility of a lower standard than a Day Hospital Class B Facility
3. an undertaking not to commence any surgical procedure on any patient after 6.00 pm, and
4. an undertaking to remain in Western Australia for a minimum of 48 hours following the completion of any surgical procedure undertaken in the State.

The Board argued (among other things) that the practitioner's credibility was such that he could not be relied upon to be honest with the Board and with the Tribunal. The Board submitted that a serious risk to persons would remain even if conditions were imposed on the practitioner's registration that prevented him from undertaking any surgical procedures because there was a risk that the practitioner would not comply with those conditions.

During the course of the hearing, Justice Tottle noted that the undertakings put forward by the practitioner may be considered inadequate because they did not include any provision for the supervision or oversight of procedures undertaken by him. The practitioner provided a revised set of undertakings in which he agreed not to carry out any form of surgery and he would confine his practice of cosmetic medicine to procedures that involved the injection of substances and to a procedure known as threadlifting and to his research activities. The practitioner also proposed that his practice be monitored and the monitoring be done by an auditor appointed by the Board.

The Board argued that the revised undertakings were not acceptable primarily on the basis that the concerns about the practitioner's competence and his honesty were such that only a suspension of his registration would be sufficient to protect the public from the serious risk of harm.

Decision

The Tribunal granted the practitioner's application for an interim stay of the immediate action. Justice Tottle specifically noted that central to his decision was his view that the undertakings offered by the practitioner meant that the suspension of his registration as a medical practitioner would no longer be necessary to protect public health and safety.

The Tribunal did not accept the Board's submission that the practitioner could not be trusted to comply with the terms of his undertaking. Justice Tottle noted that such a finding would depend on accepting that the credit issues raised by the Board would be accepted and that those credit issues could not be resolved in the context of the stay application. Justice Tottle was not satisfied that the unresolved credit issues were a basis upon which he should conclude that the risk of non-compliance would justify a refusal of a stay.

Implications

This case provides a timely reminder to practitioners and their representatives that the offering of undertakings at an early stage should be considered in circumstances where immediate action by a regulatory

body is proposed. Any undertaking proffered should be specifically tailored so that it addresses the concerns held by the regulatory body.

This article was written by Principal Shannon Mony and Associate Will Goodheart. Please contact us if you have any questions or would like more information.



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