

## *Tribunal's Discretion on Costs*

### *Chaudhry v Medical Board of Australia [2015] QCAT 414*

#### Key Points

- The Queensland Civil and Administrative Tribunal (**Tribunal**) (equivalent to the State Administrative Tribunal in Western Australia) has a broad discretion to make any order about costs it considers appropriate.
- There is no general rule that the successful party will be awarded costs unless special circumstances require departure from it.
- In the present case, the Medical Board of Australia's (**the Board**) failure to investigate the medical practitioner's conduct was a primary consideration in the Tribunal making an award of costs against it.

#### Background


Dr Muhammad Tahir Bashir Chaudhry is an immunologist and allergist. The Board imposed conditions on Dr Chaudhry's registration following notification that Dr Chaudhry had failed to check the 1,350 pathology reports in his holding file and that he thus placed patients in danger. Dr Chaudhry applied to the Tribunal to set aside the Medical Board of Australia's decision to impose conditions on his registration and was successful. Dr Chaudhry then sought an order that the Board pay his costs of and incidental to the application.

#### Law

Section 201 of the *Health Practitioner Regulation National Law Act 2009* (QLD) (**National Law**) gives the Tribunal a broad discretion to make any order about costs it considers appropriate. In the present case, the Tribunal found that there is no general rule that the successful party will be awarded costs unless special circumstances require departure from it. The imposition of such a general rule would fetter the Tribunal's broad discretion.

#### Conclusion

The Board decided to impose conditions on Dr Chaudhry's registration after it had formed a reasonable belief that the conditions were necessary to protect the public. On 2 May 2013, Dr Chaudhry applied for a review of the Board's decision. On 19 July 2013, Dr Chaudhry was notified that the Board would further investigate the matter in accordance with its requirements under section 158(1)(b) of the National Law. On 30 August 2013, Dr Chaudhry



provided detailed correspondence and submissions which revealed that:

- Dr Chaudhry could check the patient's pathology results without accessing the holding file;
- The holding file contained pathology results ordered by other medical practitioners and he was not required to review these; and
- The medical records confirm that Dr Chaudhry reviewed and actioned all relevant pathology results.

On 19 February 2014, Dr Chaudhry filed his affidavit attesting to, amongst other things, the above information.

Since the Board's decision to impose conditions on Dr Chaudhry's registration, it was unclear what further action the Board took. There was no evidence that the Board further investigated the matter in order to progress the proceedings. The Tribunal held that the Board should have undertaken a diligent investigation of the matter as early as April 2013 and at least following Dr Chaudhry's submissions in August 2013. Their investigation would have displaced the Board's reasonable belief as to Dr Chaudhry's conduct. The Tribunal further held that the Board had powers of investigation which it was obliged to exercise, but did not.

On the basis that Dr Chaudhry was successful with the review, that he established the matters pleaded in his response, and that the Board failed to ascertain those matters by way of a timely and diligent investigation, the Tribunal found that Dr Chaudhry was entitled to an award of costs.

## Lessons Learnt

This case highlights the importance of the Medical Board of Australia undertaking an investigation of the matter in a timely and diligent manner. In the present case, the Board's failure to investigate was a primary consideration in the Tribunal making an award of costs against it. The case also reinforces the Tribunal's broad and unfettered discretion to make any costs orders that it considers appropriate. Similar legislation applies in Western Australia where section 87(4) of the *State Administrative Tribunal Act* indicates that whilst the Tribunal's discretion is not limited when making orders as to costs, it must consider whether the party seeking costs genuinely assisted the Tribunal to make a decision on its merits and whether the Board genuinely attempted to make a decision on its merits.



## Contact

For more information on this article, please contact:

Mark Birbeck  
Partner  
T: +61 (0) 8 9265 6002  
M: 0448 446 419  
mark.birbeck@hbalegal.com

Shannon Mony  
Senior Associate  
T: +61 (0) 8 9265 6016  
M: 0452 210 682  
shannon.mony@hbalegal.com

[www.hbalegal.com](http://www.hbalegal.com)

*Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. For any legal advice please contact us*