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case study

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I v Medical Board of Australia [2011] SAHPT 18

This decision dealt with an appeal by a practitioner pursuant to s.199 of the *Health Practitioner Regulation National Law* (SA) 2010 ('*National Law*') following the Board taking immediate action against him pursuant to S.156 of the National Law.

On 3 March 2011 the Respondent took immediate action against Dr I to suspend his registration pursuant to s.156 of the *National Law*. The Doctor appealed the decision and sought to have it set aside.

It was submitted by the Appellant that in making its decision the Board had taken into account unproven allegations that did not amount to 'conduct' within the meaning of s.156 of the *National Law* sufficient to justify immediate action. The Appellant submitted that s.156 necessitated established conduct before a reasonable belief of a risk to persons could be reached sufficient to take immediate action.

The Tribunal rejected this submission and stated that s.156 clearly contemplates immediate action in certain situations where it is necessary to protect the public even before the sometimes lengthy criminal process is complete. It was considered that the effect of the Appellant's submissions would be to eviscerate s.156 and substantially defeat its purpose.

The Tribunal held that an immediate action order does not entail a detailed enquiry by the Board or Tribunal, but rather action on an urgent basis because of the need to protect the public. The Tribunal relied upon the New South Wales Supreme Court decision in *Lindsay v New South Wales Medical Board* (2008) NSWCR 40 as authority for the proposition that material upon which an immediate action order might be based may "include material that would not conventionally be considered as strictly evidentiary in nature, for example, complaints and allegations".

It was held that it was up to the Tribunal to look at the allegations in question and consider the source and the potential seriousness of any complaint. A complaint that is trivial or misconceived will clearly not be given weight and the nature of the allegations will be highly relevant to the issue of whether an order is justified.

This publication is intended to provide a general outline and is not intended to be and is not a complete or definitive statement of the law on the subject matter. Further professional advice should be sought before any action is taken in relation to the matters described in this publication.

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