

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

**NO. 009/2009
NO. 010/2009**

BETWEEN: CHIEF REGISTRAR

Applicant

A N D: IQBAL KHAN

Respondent

Applicant : Ms V. Lidse

Respondent: Mr I Khan

Date of Hearing: 28 April 2010

Date of Ruling: 28 April 2010

**EXTEMPORE RULING
ON APPLICATION TO VACATE HEARING DATE**

1. There is before the Commission an application by way of Notice of Motion to vacate the hearing dates allocated to the above matters on the 9th of December 2009.
2. The application was set down for hearing on 3rd of May 2010 for a period of 5 days.
3. These hearing dates were allocated with the consent of the Respondent.
4. By letter dated 31st of March 2010 address to the Secretary of the Commission the Respondent sought to have the dates vacated on the bases that he had an appointment with a medical specialist on the 11th of April 2010 and a further appointment in May and June regarding his medical condition.
5. The Commission responded to the Respondent by letter dated 1st of April 2010 in which the Secretary to the Commission advise to the Respondent

"Your application must be made to the Commission formally and should be accompanied by a medical report from the treating specialist detailing the need for the urgency of the treatment. The Commissioner will also need to hear argument as to why, if the hearing date is vacated, due to the

number and seriousness of the allegation an interim order suspending your practicing certificate should not be made."

6. That letter was followed by an application by Notice of Motion on the 19th of April 2010 which was set for hearing before the Commission and its now being dealt with today.
7. The Respondent gives sworn evidence before the Commission to correct what he says are errors as to dates in the affidavit. The effect of these corrections is that he says he was seen by a doctor in Melbourne on the 23rd of March 2010 and that he was seen by a specialist urologist on the 6th of April 2010 and that the specialist urologist advised him that it would be necessary to review him at 4 weekly intervals, that is the 4th of May and 4th of June.
8. It is concerning that the letter to the Commission of the 31st of March 2010 states that the respondent has an appointment in May and June regarding his medical condition whereas the affidavit and oral evidence of the Respondent make it clear that no appointment for the 4th of May was made until the 6th of April at which time the Respondent was aware of the attitude of the Commission by virtue of the letter of 1st of April 2010.
9. I do not accept, on the evidence that is before me, that there is any pressing necessity for the Respondent to attend the medical appointment on the 4th of May 2010.
10. The only evidence to support such a contention is that contained in a facsimile medical report tendered to the Commission this morning [Exhibit R1] which states:

*"Mr. Khan is a patient enrolled here. He was seen by the Urologist Mr Drent last month he had request further investigation.
This he needs urgently to make a diagnosis of his problem.
Test needed - Micturating Cystourethrogram and flow measurement.
This is been booked to be done on the 4th of May and Mr. Khan should make appropriate arrangements to be here on time for this to be done."*

11. There is nothing in that report that would suggest to me that the 4th of May is critical; there is nothing to suggest that it could not take place on for example 11th of May or some other date.
12. On the bases of the evidence that's placed before the Commission I'm of the view that the medical arrangements for the 4th of May were made without taking account of the need for Mr. Khan to be present at this Commission on the 4th of May or alternatively were made in an attempt to avoid the Respondent's attendance at this Commission on the 4th of May.
13. There are a very large number of complaints against the Respondent some of these complaints are very serious and some of the complaints if established may well lead to

the Respondent's name being removed from the role of practitioners or alternatively may lead to some other serious or significant penalty being imposed upon him.

14. The Respondent has submitted that if the hearing dates are vacated then he would consent to order for the payment of costs thrown away by the Commission as a result of vacation of those hearing dates. That of course takes account of one of the issues that arise on an application such as this, it does not take account of the overall public interest issue which is significant due to the number and seriousness of the allegations against the Respondent.
15. I am conscious of the need for the Respondent to be given a fair hearing and I am conscious of the seriousness, as the respondent points out, of the allegations against him. In balancing the need for a fair and just hearing against the public interest and attempting to err on the side of a fair and just hearing for the respondent I am reluctantly going to grant the request for an adjournment but in doing so the Respondent will be required to meet some of the costs wasted as a result of the dates being vacated.
16. There is no option as to the dates upon which for the matter proceeds; there will be no further adjournments. The matter will be listed for hearing on the 21st of June 2010 for a period of 5 days unless that date causes some difficulty for the Applicant.

ORDERS

1. Hearing dates of the 3rd to the 7th of May 2010 are vacated.
2. The proceedings are adjourned for hearing on the 21st to the 25th and the 28th to the 29th of June inclusive to commence at 9:30 am on the 21st June 2010.
3. The Respondent is pay to the Commission, prior to 4pm on the 30th April 2010, the sum of \$5000.00 by way of costs thrown away by the Commission. In the event the costs are not paid the Respondent's practicing certificate is suspended until such time as the cost are paid without further order.


JOHN CONNORS
COMMISSIONER



28 APRIL 2010