

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Jones v Psychology Board of Australia* [2019] QCAT
162

PARTIES: **CRISPIAN JONES**
(applicant)
v
PSYCHOLOGY BOARD OF AUSTRALIA
(respondent)

APPLICATION NO: OCR039-19

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 5 April 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Judge Allen QC, Deputy President

ORDERS: **1. The Application to extend a time limit is granted.**
2. The Application to stay a decision is refused.
**3. The Application to review a decision is listed for a
directions hearing at 9 am on 12 April 2019.**
**4. Costs of the Application to extend a time limit and
the Application to stay a decision are reserved.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE
TRIBUNALS – QUEENSLAND CIVIL AND
ADMINISTRATIVE TRIBUNAL – APPLICATION TO
EXTEND A TIME LIMIT – where the applicant applied
to extend the time limit within which to file an Application
to review a decision – where the application is not opposed

ADMINISTRATIVE LAW – ADMINISTRATIVE
TRIBUNALS – QUEENSLAND CIVIL AND
ADMINISTRATIVE TRIBUNAL – APPLICATION TO
STAY A DECISION – where the applicant applied to stay
the decision of the Psychology Board of Australia to
impose conditions on his registration – where the applicant
has applied to the Tribunal for review of the decision –
whether desirable to grant a stay

Health Practitioner Regulation National Law (Qld), s 3, s
178
Queensland Civil and Administrative Tribunal Act 2009
(Qld), s 22, s 61

REPRESENTATION:

Applicant: Self-represented

Respondent: Clayton Utz

APPEARANCES:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

REASONS FOR DECISION**Background**

- [1] Mr Jones is a registered psychologist. By an Application to review a decision filed on 7 February 2019, Mr Jones applies for the review of a decision of the Psychology Board of Australia ('the Board') to impose conditions on Mr Jones' registration. Because his application was filed more than 28 days after notice of the Board's decision, Mr Jones has also applied for an extension of the time limit for the filing of his Application to review a decision. Mr Jones has also applied for a stay of the Board's decision pending the ultimate decision of the Tribunal upon his Application to review a decision.
- [2] Mr Jones is an experienced psychologist. He worked as a counsellor for many years before being registered as a psychologist in 2001. He is a sole practitioner in private practice.
- [3] The Board's decision relates to Mr Jones' treatment of a patient referred to Mr Jones for assessment and management of anxiety and post-traumatic stress disorder (PTSD). Mr Jones saw the patient on four occasions in June and July 2016. The patient subsequently made a complaint about Mr Jones.

The Board's decision

- [4] In a letter from the Australian Health Practitioner Regulation Agency (AHPRA) to Mr Jones dated 21 December 2018, the Board stated the issues under consideration to be:

Performance – Inadequate or Inappropriate Treatment

Whether the knowledge, skill, or judgment possessed, or care exercised by, Mr Crispian Jones (the practitioner) in his assessment and treatment of...the notifier...was below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

Performance – Inadequate or Inaccurate Health Record

Whether the practitioner made and kept adequate clinical records in relation to his treatment of the notifier.

Performance – Communication

Whether the practitioner communicated in a respectful and professional manner with the notifier in accordance with his obligations under the Australian Psychological Society Code of Ethics.

- [5] In relation to the first issue of treatment, the Board stated that it had considered the notification of the patient, Mr Jones' responses and an independent opinion of Professor Shirley Morrissey. The Board stated that it held concerns in relation to Mr Jones' assessment and treatment of the patient and in particular, in line with the opinion of Professor Morrissey, that:
- (a) There was no evidence that Mr Jones performed any structured interviewing, diagnostic interview or further assessment of PTSD symptomatology.
 - (b) There was no evidence that Mr Jones completed a thorough assessment, a summary or case formulation, or designed a specific therapy plan to which the patient consented.
 - (c) There was no evidence that Mr Jones documented or considered the patient's deteriorating condition, as established by his Depression Anxiety Stress Scale results.
 - (d) Mr Jones used hypnosis, which is recognised as an adjunct to other evidence based interventions however, not for its use as a first line approach.
 - (e) Mr Jones chose to implement TRTP Therapy which did, and does, not have any scientific evidence for its efficacy with any psychological disorders.
- [6] The Board advised that it considered Mr Jones' professional practice in his assessment and treatment of the patient as not in accordance with the Australian Psychological Society Code and Guidelines and not to the standard reasonably expected of a practitioner of an equivalent level of training and experience. The Board advised it had formed a reasonable belief that Mr Jones' professional practice is or may be unsatisfactory.
- [7] In relation to the issue of the health records, the Board stated it held concerns in relation to Mr Jones' clinical records and in particular, in line with Professor Morrissey's opinion, that the records:
- (a) did not provide an adequate summary of Mr Jones' understanding of the patient's problems;
 - (b) did not provide any record of a planned intervention;
 - (c) did not provide an adequate summary of each session;
 - (d) did not make any mention of the deterioration of the patient's psychological distress despite the worsening Depression Anxiety Stress Scale results; and
 - (e) contained comments which were a mix of what would appear to be verbatim comments made by the patient and observations made by Mr Jones.
- [8] The Board advised that it considered Mr Jones' professional practice in his making and keeping of clinical records with respect to the patient's treatment to not be in accordance with the Australian Psychological Society Code and Guidelines and not to the standard reasonably expected of a practitioner of an equivalent level of training and experience. The Board advised it had formed a reasonable belief that Mr Jones' professional practice is or may be unsatisfactory.

- [9] In relation to the issue of communication, the Board advised that it held concerns in relation to Mr Jones' communication with the patient and in particular, in line with the opinion of Professor Morrissey, that:
- (a) The tone of Mr Jones' email correspondence could be interpreted in a variety of ways, and the language in the email correspondence from Mr Jones appeared at times to be disrespectful and/or unprofessional.
 - (b) Mr Jones' email correspondence to the patient on 25 June 2016 did not convey an empathic response, and could be interpreted as disrespectful and aggressive in its tone.
 - (c) Mr Jones' comments with regard to the self-diagnosis of C-PTSD were simplistic and disrespectful, with a particular comment sounding harsh and not particularly helpful or validating.
 - (d) Many sentences seemed to be curt, insensitive and argumentative and, presented in the email in capital letters, may be interpreted as aggressive and simplistic.
- [10] The Board advised that it considered Mr Jones' professional practice and his communication with the patient to not be in accordance with the Australian Psychological Society Code and Guidelines and not to the standard reasonably expected of a practitioner of an equivalent level of training and experience. The Board advised that it had formed a reasonable belief that Mr Jones' professional practice is or may be unsatisfactory.
- [11] The Board further advised that having considered Mr Jones' submissions of 5 September 2018, the Board held significant concerns in relation to Mr Jones' demonstrated lack of insight in relation to his performance and his responsibilities as a registered health practitioner. In particular, the Board noted that in his response, Mr Jones:
- (a) made intemperate and disrespectful comments and criticisms in relation to Professor Morrissey;
 - (b) suggested that there is neither time nor necessity for essential aspects of the practice of psychology, including treatment planning, case formulation, structured interviewing, diagnostic review and examination of symptomology, referring to these as "luxuries" of a "possible" therapeutic process;
 - (c) discounted the need for researched and evidenced based therapies and outcomes, preferring to "get on with it and get results";
 - (d) defended the inadequacy of his clinical records by suggesting that an alternative option available to him, as per the conduct of colleagues known to him, would have been to submit falsified records for the Board's consideration;
 - (e) defended the inappropriate nature of his communication by comparing it to the communication and behaviour of his client;
 - (f) placed the onus on his client to first behave and communicate respectfully and appropriately, suggesting that he has no right to make a complaint in the circumstances, and suggesting that his client should be reminded of his responsibilities in this respect; and

- (g) demonstrated that he is unlikely to consider any alternative communication styles as he does not “do ‘cup of tea’ therapy”.

[12] The Board advised that it considered it appropriate and proportionate action to require Mr Jones to undertake a period of supervision in relation to his professional performance with respect to the issues identified in the notification under consideration and his professional responsibilities and conduct with respect to the Australian Psychological Society Code of Ethics.

[13] The Board advised of its decision on 10 December 2018, confirmed on 18 December 2018, to impose conditions on Mr Jones’ registration. A copy of the schedule of conditions is annexed to these reasons.

The Application to review a decision

[14] In his Application to review a decision, Mr Jones seeks that the Board’s decision be set aside or, in the alternative, that he be required to undertake relevant professional development within 12 months at his expense pertinent to the three issues considered by the Board, but with no conditions on his registration. Mr Jones presents arguments why the Board’s decision is wrong and not properly made. I have considered the full content of those written arguments. I have also considered the detail of Mr Jones’ submissions to the Board on such matters, including the submissions on behalf of Mr Jones dated 19 October 2016, Mr Jones’ written response to the opinion of Professor Morrissey and Mr Jones’ letter to APHRA dated 18 November 2018.

The Application to extend a time limit

[15] With respect to the Application to extend a time limit, Mr Jones has provided an adequate explanation of the circumstances leading him to require a relatively short extension of time for filing of his Application to review a decision. The Board does not oppose the application for extension of time and accepts that the delay in commencement of proceedings is short and the Board will not be prejudiced if the application is granted.

[16] The Tribunal has a broad discretion pursuant to s 61 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (*‘QCAT Act’*) to waive compliance with strict procedural requirements, including time limits, and it is appropriate that the discretion be exercised to permit consideration of the Application to review the decision and the Application to stay a decision despite the non-compliance with the applicable time limit. The Application to extend a time limit is granted.

The Application to stay a decision

[17] Section 22(3) of the *QCAT Act* empowers the Tribunal to make an order staying the operation of a reviewable decision. Section 22(4) of the *QCAT Act* provides as follows:

- (4) The tribunal may make an order under subsection (3) only if it considers the order is desirable after having regard to the following—
 - (a) the interests of any person whose interests may be affected by the making of the order or the order not being made;
 - (b) any submission made to the tribunal by the decision-maker for the reviewable decision;
 - (c) the public interest.

Mr Jones' submissions

- [18] In the Application to stay a decision and further submissions Mr Jones submits as follows.
- [19] If the decision is not stayed Mr Jones will suffer significant detriment. The conditions placed upon Mr Jones' registration will lead to him incurring considerable expense in engaging a supervisor. Mr Jones will be required to devote a substantial amount of time in complying with the conditions with a potential consequential loss of income. If Mr Jones is subsequently successful in his Application to review the decision and in having the conditions removed he will have, in the absence of a stay, been obliged to incur costs and resources such that it would be impractical or impossible to restore him to the position he would have been in had the conditions not been imposed.
- [20] Whilst there would be the potential for significant detriment to Mr Jones if the decision is not stayed, there would be minimal detriment to the public. There is no evidence of Mr Jones having done any harm to the public, including the patient who made the complaint. Mr Jones has not been the subject of any other complaints. There would be no risk to the public if the stay was granted. The public interest is not detrimentally impacted by a stay or any such impact would be minimal.
- [21] There would be no immediate detriment to the decision maker should the decision be stayed even if the decision was later determined to stand. If a stay was granted and Mr Jones' application was later unsuccessful it would simply mean a deferral of the time when the conditions would commence to have effect. The fact that the Board's investigative process took in excess of two years indicates that the Board did not consider itself adversely impacted by the passing of the time required to reach its decision. The decision maker would not be detrimentally impacted by a stay or any such impact would be minimal.
- [22] Mr Jones also makes further submissions directed towards the merits of the Board's decision and his Application to review a decision.

The Board's submissions

- [23] The Board submits that the conditions imposed are relatively low level, effectively imposing indirect supervision of Mr Jones, requiring a monthly one hour meeting with a skilled registered practitioner, and it cannot be suggested that the conditions imposed upon Mr Jones are particularly onerous, nor such as to practically disqualify him from practice. The conditions impose what is, in effect, a mentoring regime, to ensure patient safety in circumstances where Mr Jones practices as a private practitioner in sole practice in the absence of safeguards which might exist were he to be practising in the environment of a multi-practitioner practice or a hospital.
- [24] The Board makes further submissions as to the merits of the decision of the Board and the Application to review a decision.
- [25] The Board submits that Mr Jones' submissions relating to the length of time spent in investigation of the matter prior to the conditions being imposed are misconceived given the requirement for the Board to afford procedural fairness to Mr Jones in its investigation of the matter and afford Mr Jones the opportunity to properly respond to allegations including independent expert evidence obtained during the course of the investigation.

[26] The Board submits that the independent expert evidence, coupled with Mr Jones' views as to his professional obligations, is sufficient to warrant the conditions imposed upon his registration and that the conditions are of such a degree to justify being maintained until such time as the review proceedings are determined.

Consideration

[27] Section 22(4)(a) of the *QCAT Act* requires consideration of the interests of Mr Jones and how they will be affected if a stay is not granted. The restrictions placed upon Mr Jones' practice by the conditions do not effectively prohibit him from practise. However, Mr Jones will incur expense and be subject to other burdens as a consequence of the conditions. Mr Jones will have no recompense if a stay is not granted and he is ultimately successful in his Application to review a decision. Whilst such consideration weighs in favour of a stay it is not by itself sufficient to warrant the grant of a stay.

[28] Whilst I am not in a position to reach any concluded view as to the prospects of success of the Application to review a decision, and it would be inappropriate to attempt to do so, I have considered the material relied upon by the Board in reaching its decision, including the expert opinion of Professor Morrissey and the submissions by and on behalf of Mr Jones to the Board, and the submissions by both parties on this application relevant to that issue. The decision of the Board is not so clearly wrong and Mr Jones' prospects of success in his application not so clearly good as to weigh in favour of a stay.

[29] With respect to s 22(4)(c) of the *QCAT Act* and the public interest, the Board made its decision to impose conditions upon Mr Jones' registration after forming a belief that Mr Jones' professional practice is or may be unsatisfactory.¹ It did so in the context of the objectives and guiding principles of the *National Law*:

- (a) to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered;² and
- (b) restrictions on the practise of a health profession are to be imposed only if it is necessary to ensure health services are provided safely and are of an appropriate quality.³

[30] I am of the view that the public interest weighs against the granting of a stay of the Board's decision.

[31] Taking into account all the material before me and those matters mandated by s 22(4) of the *QCAT Act*, I do not consider that it is desirable to grant the application for a stay of the Board's decision. Mr Jones' Application to stay a decision is refused.

[32] With a view to expediting the hearing of the Application to review a decision, the matter will be listed for a directions hearing on 12 April 2019.

[33] Costs of the Application to extend a time limit and of the Application to stay a decision are reserved.

¹ *Health Practitioner Regulation National Law (Qld)*, s 178(1)(a)(i) ('*National Law*').

² *National Law*, s 3(2)(a).

³ *National Law*, s 3(3)(c).

Schedule of Conditions

Attend for supervision

- [1] The Practitioner must be supervised by another registered psychologist in relation to appropriate communication, clinical record keeping and clinical skills with respect to assessment, evaluation, and the formulation and implementation of appropriate treatment plans.

For the purposes of this condition, 'supervision' is defined as a professional relationship in which a skilled registered practitioner (the approved supervisor) helps to guide the professional development of another registered practitioner (the Practitioner) to integrate professional knowledge and skills into demonstrated competencies that meet the accepted standard of performance outlined in the Board adopted code of ethics.

- [2] The supervision must occur on a monthly basis for a minimum of 12 months with each session being of one (1) hour duration. The supervision must continue until these conditions are removed by the Board.

- [3] Within twenty-one (21) days of the notice of the imposition of these conditions, the Practitioner must:

- a) Provide to the Board acknowledgement, on the approved form (HP13), that reports will be sought from the supervisor(s) approved by the Board and what those reports must contain.
- b) Nominate to the Board, on the approved form (HPN13), the names of three suitability skilled registered psychologists to be considered for approval as supervisors.
- c) Ensure the nominated supervisors meet all the requirements of the approved form.
- d) Ensure the nomination is accompanied by acknowledgement, on the approved form (HPNA13) from the nominated supervisors and by the information and documentation required on the form.

- [4] Within 14 days of being advised of the supervisor approved by the Board the Practitioner is to:

- a) commence supervision with the Board approved supervisor, and
- b) provide to the Board, on the approved form (HPSP13) a supervision plan signed by the approved supervisor. The supervision plan must include the schedule, format and details of how supervision will address the Board's concerns.

- [5] The Practitioner is to ensure reports are provided to the Board/AHPRA as follows:

- a) every three (3) months from the date of approval of the supervisor by the Board
- b) at the conclusion of the minimum period of supervision prescribed in the conditions on the Practitioner's registration

- c) at any later time that the Practitioner requests the Board to consider reviewing the supervision condition
 - d) whenever the supervisor has a concern or becomes aware of a concern regarding the Practitioner's conduct or professional performance; and
 - e) when requested either verbally or in writing by AHPRA or the Board.
- [6] The Practitioner is to ensure reports provided in accordance with this condition include:
- a) the format, date, time and length of each supervision session that has occurred since the previous report
 - b) the supervisor's opinion as to whether the Practitioner has satisfactorily participated in, and understood the focus of, the supervision, and
 - c) the Practitioner's own reflections on the supervision (unless the report is for the purpose of the approved supervisor raising concerns about the Practitioner).
- [7] The Practitioner is to continue with supervision until such time as the Board advises in writing that it is satisfied the reports demonstrate the Practitioner has reflected on and addressed the issues that gave rise to the supervision condition and how the Practitioner has incorporated the lessons learnt in the supervision.
- [8] In the event the supervisor is no longer willing or able to provide the supervision required the Practitioner is to provide a new nomination to the Board in the same terms as previous nominations. Such nomination must be made by the Practitioner within twenty-one (21) days of becoming aware of the termination of the supervision relationship.
- [9] The Practitioner is not entitled to claim the hours spent with the supervisor or the time spent preparing reports for the Board in compliance with this condition as part of the Continuing Professional Development requirements for registration.
- [10] Within 21 days notice of the imposition of these conditions the Practitioner must provide to AHPRA, on the approved form (HPC), the contact details of a senior person, such as the Director of Medical Services, Director of Nursing, Senior Practice Manager, Senior Manager, Senior Partner, Proprietor, Owner, or equivalent (the senior person) at each a current place of practice. In providing this form, the practitioner acknowledges that:
- a) AHPRA will contact the senior person and provide them with a copy of the conditions on the Practitioners registration or confirm that the senior person has received a copy of the conditions from the Practitioner, and
 - b) The Practitioner will be required to provide the same form:
 - i) within seven days of the commencement of practice at each and every subsequent place of practice, and
 - ii) within seven days of each and every notice of any subsequent alteration of these conditions.

[11] All costs associated with compliance with the conditions on their registration are at the Practitioner's own expense.