

# THE IMPORTANCE OF WORKING WITH REGULATORS

*Mukonoweshuro v Occupational Therapy Board of Australia [2020] NSWCATOD 11*

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This recent NSW case relates to Mr Mukonoweshuro, an occupational therapist practicing first in Queensland and then in New South Wales. Mr Mukonoweshuro had been subject to licencing restrictions by the Occupational Therapy Board of Australia (**the Board**) because of his transition from being an overseas practitioner.

Where appropriate, the Board also acted through the Occupational Therapy Council of Australia (**the Council**), the accredited authority to assess overseas-trained occupational therapists for eligibility to practice in Australia.

In Australia, the primary role of boards and councils is to protect the health and safety of the public. This case highlights the importance of practitioners working with boards and councils to ensure that any risks are overcome and that professional bodies can be satisfied of the training and skill of practitioners.

When practitioners find themselves before boards and councils, conceding that further work is required can often be perceived by practitioners as an unfavourable option as opposed to the instinctive desire to justify prior actions. However, as seen in this case, taking such action including appealing to Tribunals, can ultimately be to a practitioner's detriment.

## Case background

Having worked as an occupation therapist in Zimbabwe between 2009 and 2014,

Mr Mukonoweshuro travelled to Australia in 2014. On 29 August 2014, the Board registered Mr Mukonoweshuro on the basis that he would only work under supervision with an approved practitioner.

In January 2017 to August 2017, Mr Mukonoweshuro practiced under Category 2 "indirect" supervision with Ms Mills at River Healthcare. However, at the end of the supervisory period questions were raised about the authenticity and accuracy of the supervision report (including by Ms Mills).

On 15 September 2017, the Council notified Mr Mukonoweshuro that it had decided not to issue him with a "practical competition" certificate, but rather recommended he undertake a further 12 months of supervision to "assist [you] in gaining the competence required".

In November 2017, Mr Mukonoweshuro appealed the Council's decision to an Independent Appeal Panel (**the Panel**). On 29 January 2018, the Council notified Mr Mukonoweshuro that the appeal had been unsuccessful. The Panel stated that he had not provided sufficient material to demonstrate that he met the "required criteria".

The Panel found that the documentation submitted by Mr Mukonoweshuro did not contain information as to appropriate occupational therapy treatment or targeted intervention tailored to the needs of individual clients; and failed to demonstrate an understanding of the role of occupational

therapists in an aged care setting. The Panel noted that it was difficult to determine from the submitted documentation whether, as claimed by Mr Mukonoweshuro, he had undertaken the requisite “CPD activity” (paragraph 36 of the judgment).

From January 2018 to May 2018, Mr Mukonoweshuro worked under the supervision of Mr Gaidies. In May 2018, that supervision was cancelled after Mr Mukonoweshuro failed to provide requested supervision reports and logbooks.

### **August 2018 Application**

A further application was submitted, which led to a 23 August 2018 notification by the Board that supervisory conditions were being reinstated for a further 12 months.

However, in September 2018, Mr Mukonoweshuro again failed to provide the requested supervisory logs and progress reports and by 3 October 2018, his supervisory practice arrangements had been cancelled by the Board.

In November 2018, Mr Mukonoweshuro then started a position with Tamworth-based rehabilitation consultant RehabCo. He then sought approval and a change of circumstances allowing him to upgrade from Level 2 indirect supervision to Level 4 minimal general oversight. After requesting further information on 4 February 2019, Mr Mukonoweshuro’s supervision was approved but only with Level 2 supervision.

Mr Mukonoweshuro sought a review of that decision on 11 February 2019. After further review, on 2 May 2019 the Board declined to remove the subject conditions indicating that Mr Mukonoweshuro had not complied with his previous conditions or supplied appropriate materials.

### **Appeal to the Tribunal**

Subsequently, in June 2019, Mr Mukonoweshuro sought to appeal to the NSW Civil and Administrative Tribunal (**Tribunal**) seeking a grant of his general registration. In particular, Mr Mukonoweshuro sought to challenge the August 2018 decision to reimpose supervisory conditions for a further 12 months.

Mr Mukonoweshuro argued that:

- a) he successfully completed six months’ supervised practice with Ms Mills
- b) he demonstrated competence to practice at Level 4 supervision
- c) all relevant reports were submitted by him where appropriate, and where supervisors failed to provide information, he should not be penalised, and
- d) his experience and qualifications meant that the more stringent Level 2 supervision was not appropriate.

The matter proceeded to a hearing on 23 September 2019 and 14 October 2019, with a decision handed down in 31 January 2020. Amongst other reasons, the Tribunal found that Mr Mukonoweshuro had not provided sufficient evidence to show that he had met the supervisory conditions. Furthermore, the Tribunal held that the appeal had not been made at the appropriate time (which was within 28 days of the August 2019 application) and so it could not proceed.

Ultimately the Tribunal made orders confirming the Board’s decision.

## Why the approach matters

This case highlights the importance of working with boards to overcome issues, as opposed to challenging their decisions. In this case, Mr Mukonoweshuro had multiple opportunities from 2017 to August 2018, and then subsequently, to work with the Board to provide logs and reports and to overcome the need for supervision. However, the constant challenges and failures to provide materials ultimately led to Mr Mukonoweshuro's outcome. Now, nearly two years since the August 2018 decision, he finds himself needing to fulfil a further 12 months of supervision.

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