

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO:GC 119 OF 2020

BETWEEN:

PENSUM REGENERATIVE MEDICINE LTD.

Applicants

AND:

THE HEALTH APPEALS TRIBUNAL

Respondents



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant(s)	The Applicant is Pensum Regenerative Medicine Ltd (" Pensum "), a duly incorporated Cayman Islands Company who provide medical services from premises located at 13 Belmont Close, Crewe Road, Grand Cayman.
Judgment, order, decision or other proceeding in respect of which relief is sought	<p>On 9 July 2020, the Health Practice Commission (the HPC) delivered to Pensum a Prohibition Notice (as defined by section 18 of the Health Practice Law (2017 Revision) (the Law) which directed the cessation of certain services and activities (the Prohibition Notice).</p> <p>On 29 July 2020, pursuant to section 20 of the Law, Pensum appealed (the Appeal) against the Prohibition Notice by notice to the Health Appeals Tribunal (the HAT).</p> <p>Pursuant to section 20(3)(a) of the Law Pensum applied for a direction that the operation of the Prohibition Notice be</p>

	<p>suspended until this Appeal is finally disposed of (the Stay Application).</p> <p>In light of the significant disruption to its activities, and the prejudice arising from the Prohibition Notice, Penum required that the HAT render a decision in connection with the Stay Application by 4pm, 5 August 2020.</p> <p>The HAT has failed to make a decision on the Stay Application.</p>
<p style="text-align: center;">Relief Sought</p> <p>(i) An order of mandamus compelling the HAT to render a decision on the Stay Application.</p> <p>(ii) A declaration that the failure of the HAT to render a decision on the Stay Application was unlawful.</p> <p>(iii) an interim order suspending the operation of the Prohibition Notice.</p> <p>(iv) Damages.</p> <p>(v) Costs.</p> <p>(vi) Such further or other orders or declarations as the court deems just.</p>	
<p>Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant</p>	<p>The Applicant is represented by Nelsons, 31 The Strand, PO Box 30069, Grand Cayman KY1-1201.</p> <p>Ref CF/AC 7997-44</p>
<p>Signed: <i>Nelsons</i></p>	<p>Dated 5th August 2020</p>

GROUNDINGS ON WHICH RELIEF IS SOUGHT

The Appeal/Stay Application

1. Section 20 of the Law affords a right of appeal for a person served with a *notice*. For the purposes of that section *notice* includes a prohibition notice.
2. A person on whom a prohibition notice is served may within 28 days Appeal to the HAT.
3. In the case of a prohibition notice, section 20(3)(b) provides that the operation of the notice may only be suspended pending disposal of the appeal if the appellant so applies and the HAT so directs.
4. On 29 July 2020, following email delivery of the Prohibition Notice (on 9 July 2020) and within the time allowed by section 20 of the Law, Pensum lodged the Appeal.
5. Pensum's Stay Application was made expressly in its Notice of Appeal and in a cover letter of the same date addressed to the Secretary of the HAT.

The HAT

6. Section 4 of the Law provides for the establishment of the HAT. The composition and procedure of the HAT is governed by Schedule 2.
7. Schedule 2, section 3 provides that a person who is aggrieved by a decision of the HPC from which an appeal is allowed under the Law, may submit an Appeal to the HAT. Appeals are made by notice in writing addressed to the secretary of the HAT and are required to set out:
 - (a) the decision against which the appeal is made;
 - (b) the grounds of the appeal; and
 - (c) whether or not the appellant wishes to be heard personally or by a representative.

8. On 21 July 2020, Mrs Marla Gibbs, a director of Pensum, in anticipation of the filing of the Appeal made enquiry with the Ministry of Health as to the composition of the HAT. By response from Ms. Janett Flynn dated 22 July 2020, Pensum was advised:

"... that the appointment of the members [of the HAT] are in progress and you will be advised once this is complete.

If you are filing an appeal please send your appeal to the attention of Secretary, Health Appeals Tribunal, Ministry of Health and you will receive a response shortly thereafter."

9. Pensum followed this direction in the filing of the Appeal and the Stay Application. Considering the content of the email from Ms. Flynn, it is reasonable to infer that the HAT may not yet be constituted in accordance with the Law.
10. Pensum has a legitimate expectation that provisions of the Law providing for the timely constitution of the HAT would be complied such that upon filing the Appeal a determination on the Stay Application would be made.
11. In the absence of a properly constituted HAT, Pensum has not been afforded a proper opportunity to be heard on the Stay Application, contrary to rules of natural justice.
12. There is an obligation on the HAT to act compatibly with the Law and the Cayman Islands Constitution. It is unlawful for a public authority to act in a way incompatible with the Bill of Rights. This includes a failure to act. In the premises the failure of the HAT to make a decision on the Stay Application is unlawful and Pensum seeks an Order of mandamus compelling the HAT to make an expeditious determination on the Stay Application and a declaration that the failure to make a decision on the Stay Application was unlawful.
13. As a result of the failure of the HAT to make a decision on the Stay Application Pensum has suffered loss and damage

Interim Order

14. By reason of the grounds set out above, Pensum seeks an interim order suspending the operation of the Prohibition Notice pending further order.