

IN THE GRAND COURT OF THE CAYMAN ISLANDS

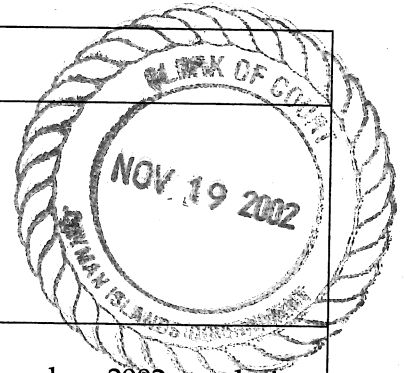


CAUSE NO. 863 OF 2002

BETWEEN: DR. SANJIB K. MOHANTY PLAINTIFF  
AND: THE HEALTH PRACTITIONERS' BOARD DEFENDANT

EX PARTE 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	Dr. Sanjib Mohanty Medical Practitioner P.O. Box 273 GT, Grand Cayman
Judgment, order, decision or other proceedings in respect of which relief is sought	Decision dated 7 November 2002 rendering the Plaintiff's registration with the Defendant as void.
<u>Relief Sought</u>	
1. An Order for <i>Certiorari</i> to remove into this Honourable Court and quash the decision of the Health Practitioners' Board dated 7 November 2002 whereby it rendered and/or declared the Plaintiff's registration under the Health Practitioners' Law as void.	
2. A declaration that the registration of the said Dr. Sanjib Mohanty remains in full force and effect and that he is entitled to continue to practice as a General Surgeon pursuant thereto.	
3. An Order to the Health Practitioners' Board requiring them to give effect to the above declaration.	
4. An injunction restraining the Health Practitioners' Board from putting into effect their decision of 7 November 2002 or in any way attempting to prevent Dr. Mohanty from pursuing his medical practice as a General Surgeon until after the hearing and determination of this matter by this Honourable Court.	
5. That the Defendant be prohibited from publishing in any manner or form the decision taken on 7 November 2002 until the resolution of this action.	
6. Damages against the Health Practitioners' Board for misfeasance in public office.	
7. Costs	



Name and address of Applicant's Attorneys, or if no attorneys acting, the address for service of the applicant	Quin & Hampson 3rd Floor, Harbour Centre P.O. Box 1348, George Town, Grand Cayman
Signed <u><i>Quin &amp; Hampson</i></u> Quin & Hampson	Dated: 14 November 2002.

### GROUND ON WHICH RELIEF IS SOUGHT

The factual background to this Application for Leave to Apply for Judicial review is contained in the Affidavit of the said Dr. Sanjib Mohanty and the Exhibits thereto which is filed with this Application and in support of it and this Affidavit will be relied upon in support of the application on the following grounds:-

1. That the decision of the Health Practitioners' Board dated 7 November 2002 to the effect that the Registration granted to Dr. Mohanty to practice as a General Surgeon should be rendered and/or declared void is in all the circumstances of this matter unlawful, irrational and unreasonable within the Wednesbury principles.
2. The decision of the Health Practitioners' Board is one to which no reasonable and unbiased Tribunal giving proper consideration to the matter could ever have arrived at.
3. That the Health Practitioners' Board failed to understand the representations made to it in the letter dated 28 October 2002 from Dr. Mohanty to the Chairman of the Board and the further oral representations made to the Board on th 5 November 2002 by Counsel for Dr. Mohanty and Dr. Mohanty himself.
4. That the finding that Dr. Mohanty had acknowledged that the answer to the question on his application form was false and consequently that his registration was void, is plainly wrong and indicates that the Board did not properly understand the meaning, intent and spirit of the law and the provisions of the Health Practitioners' Law and failed to properly exercise its functions. The Board failed to consider and make any findings:-
  - (a) as to whether a false answer was knowingly and deliberately given by Dr. Mohanty with the intention of misleading the Board.
  - (b) as to whether Dr. Mohanty's answer to the relevant question on the application form even if technically incorrect was a material misrepresentation on his part.
  - (c) as to whether an incorrect answer to a question not accompanied by a deliberate and conscious intention to deceive (namely a guilty mind) was sufficient as a matter of law to warrant declaring a registration void.
5. In the absence of a finding that Dr. Mohanty knowingly and with the intention to deceive the Board made a false statement, a decision that his registration should be declared void is a matter of law illegal and unjustifiable. Specific findings against Dr. Mohanty in relation to

4(a), 4(b) and 4(c) above were necessary before his registration could be rendered or declared to be void.

6. The Board made no such findings and indeed had any such findings been made by the Board they would have been perverse and unjustifiable in the circumstances. Consequently the decision of the Board as a matter of law should be set aside.
7. In any event, the decision of the Board contained in its letter of 7 November 2002 to Dr. Mohanty is neither proportionate to the matter at issue nor just in its effect. It is an oppressive, vicious, biased and malicious decision and one that should be quashed.
8. That as a consequence of the decision of the Board the applicant has been injured in his reputation, has sustained an appreciable loss of income and therefore claims damages against the Board.

NOTE: Pursuant to Order 53 R(3) and in view of the tremendous adverse consequences for the applicant of the Board's decision on 7 November 2002, an oral hearing from Leading Counsel for the applicant is requested before this application for leave to apply for Judicial Review is considered and determined by this Honourable Court.

TO: The Clerk of the Court

This EX PARTE APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW was issued by Quin & Hampson, Attorneys-at-Law for the Plaintiff whose address for service is 3<sup>rd</sup> Floor, Harbour Centre, P.O. Box 1348, George Town, Grand Cayman