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SUPREME COURT OF VICTORIA

HUMPHREY v AUGER

Gray J — 10 February 1983

MOTOR TRAFFIC – MOTOR VEHICLE – TAKING OF SAMPLE OF BLOOD – WHETHER DURING INTERNSHIP DOCTOR IS A LEGALLY QUALIFIED MEDICAL PRACTITIONER: MOTOR CAR ACT 1958, S80D.

An information laid against A. was dismissed before a Magistrates' Court on the ground that a doctor who took a sample of blood for analysis was not, during internship, a legally qualified medical practitioner.

HELD: The doctor was a legally qualified medical practitioner within the meaning of s80D.

GRAY J: *[After setting out the facts, His Honour continued]:* It is, I think, plain beyond argument that the expression "Legally qualified medical practitioner" in s80D means a person registered as a legally qualified medical practitioner by the Medical Board of Victoria. The question of registration of medical practitioners is dealt with in the *Medical Practitioners' Act 1970*. Section 4 establishes a Board known as the Medical Board of Victoria. Section 19 provides that any person is qualified to be registered as a legally qualified medical practitioner who satisfies the Board of various matters set out in the section. By amendment in 1973, a new section 19A was introduced into the Act. Section 19A is in the following terms:

"The registration of a person first registered under this Act after the 1st day of October 1973, shall be and remain provisional only until he has to the satisfaction of the Board completed a period of twelve months post-graduate internship in an approved institution or periods amounting in the aggregate to twelve months post-graduate internship in an approved institution as a resident medical officer or as a resident medical officer or like officer in a comparable institution or comparable institution or elsewhere."

Section 19C provides that:

"The holder of provisional registration under this Act may practice in Victoria only within an approved institution at which he is undergoing hospital residency training."

In my opinion there was ample evidence before the Magistrates' Court that Dr Ashman had obtained provisional registration with the Medical Board on the 3rd of December 1981. There was, in my opinion, ample evidence that the blood sample in question was taken by Dr Ashman at the Latrobe Valley Hospital. It was further implicit in Dr Ashman's evidence that he was at the relevant time in the course of an internship at that hospital. While it is true that there was no specific evidence that the Latrobe Valley Hospital had been approved by the Medical Board, it was a matter which could be safely inferred in the absence of any indication to the contrary. *[After discussion of the argument raised by Counsel, His Honour continued]:* In my opinion it is clear almost beyond argument that a provisionally registered medical practitioner who takes a blood sample in the course of his work at the institution where he is serving his internship is a "legally qualified medical practitioner" within the meaning of s80D of the *Motor Car Act*.

[After further discussion of Counsel's argument, His Honour said]: It was also said that there was no evidence that the Latrobe Valley Hospital was an approved institution within the meaning of s19C of the *Medical Practitioners' Act*. Once again, no such point is relied upon and, once again, the point can still be taken if it has any substance. I should say that, if any such point is taken, the Magistrates' Court should give consideration to allowing the prosecution case to be re-opened to enable such evidentiary gaps to be filled, if any such gaps exist. In this connection I refer to *Barritt v Baker* [1948] Vic Law Rp 85; (1948) VLR 491, per Fullagar J at p495, where His Honour points out that courts, both superior and inferior, are concerned to arrive at the truth so far as it is within their power... For the reasons I have sought to express, the order nisi will be made absolute. Information remitted to the Magistrates' Court to be further heard in the light of these reasons for judgment.