

IN THE MEDICAL TRIBUNAL OF NEW SOUTH WALES

THE MEDICAL PRACTICE ACT 1992

DEPUTY CHAIRMAN: HIS HONOUR JUDGE J C McGUIRE

MEMBERS: DR D CHILD

DR D SUTHERLAND

MS G ETTINGER

NO. 40003/05 – DR PHILLIP JOHN GUEST

REASONS FOR DETERMINATION

21st September, 2005

Nature of Complaint

Pursuant to the Medical Practice Act 1992 (the Act), the Tribunal is enquiring into a complaint of the Commissioner. Health Care Complaints Commission (HCCC) into the professional conduct of Dr Phillip John Guest.

The HCCC complains that Dr Phillip John Guest of Bradbury and Macarthur Medical Centre, The Parkway, Bradbury, NSW, 2560 (“the practitioner”) being a medical practitioner registered under the Act has been guilty of professional misconduct and/or unsatisfactory professional conduct within the meaning of s.36 and s.37 of the Act in that he:

- i) demonstrated a lack of adequate knowledge, skill, judgment or care in the practice of medicine, and
- ii) engaged in conduct relating to the practice of medicine that is improper or unethical.

PARTICULARS

- 1) Between February 1999 and February 2001 the practitioner prescribed anabolic/androgenic steroids namely Methenolone Acetate (Primobolan), and testosterone (Andriol, Sustanon and Primosteston) to the patients and on the dates listed in Schedules A to L:
 - a) in quantities and for a purpose or purposes not in accordance with recognised therapeutic standards of what is appropriate in the circumstances contrary to clause 36 of the Poisons and Therapeutic Goods Regulation 1994;
 - b) without exercising responsible medical judgment.
- 2) Between February 1999 and February 2001 the practitioner prescribed anabolic/androgenic steroids namely Nandrolone Decanoate (Deca Durabolin) to patients A, B, C, D, E, F, G, H and L:
 - a) in quantities and for a purpose or purposes not in accordance with recognised therapeutic standards of what is appropriate in the circumstances, contrary to clause 36 of the Poisons & Therapeutic Goods Regulation 1994,
 - b) without exercising responsible medical judgment.
- 3) Between June 2000 and September 2000 the practitioner prescribed anabolic/androgenic steroid namely Fluoxymesterone (Halotestin) to patient B:
 - a) in quantities and/or for a purpose or purposes not in accordance with recognised therapeutic standards of what is appropriate in the circumstances, contrary to

clause 36 of the Poisons & Therapeutic Goods Regulation;

b) without exercising responsible medical judgment.

- 4) And failed to make a record of particulars in relation to the prescription of such drugs, including (a) name, strength, quantity of the substance prescribed; and (b) the maximum number of times the substance may be supplied on the prescription; and (c) the name and address of the patient in accordance with clauses 40 & 37(1)(b) of the Poisons and Therapeutic Goods Regulation 1994.
- 5) And failed to make a record of the consultation in accordance with clause 13 of the Medical Practice Regulation 1994 for patients A, F, G, I and L.

The Tribunal had before it the evidence tendered by consent and the brief evidence of the practitioner as to certain aspects of his account. It contains an interview he gave to an investigator from the Pharmaceutical Services Branch of the NSW Health Department (PSB) on 14th June, 2001 and his statement.

At the commencement of the proceedings before this Tribunal, Ms Manuell who appeared for the HCCC submitted that the evidence disclosed that the practitioner's conduct amounted to professional misconduct justifying his suspension or removal.

Section 37 of the Act sets out the meaning of professional misconduct:

Professional misconduct of a registered medical practitioner means unsatisfactory professional conduct of a sufficiently serious nature to justify suspension of the practitioner from practising medicine or the removal of the practitioner's name from the register.

The onus or standard of proof in establishing professional misconduct to be applied by the Tribunal is that referred to in **Rejek v McElroy** (1995) 112 CLR 517 @ 521. That standard was applied in **Bannister v Walton** (1993) 30 NSWLR 699 where it was held that the requirement is that the Tribunal be “*comfortably satisfied on the balance of probabilities*”.

The Tribunal must have regard to the gravity and importance of the matters which it is deciding in accordance with the principles stated in **Briginshaw v Briginshaw** (1938) 60 CLR 336 @ 360-363. At pages 361 and 362 Sir Owen Dixon stated:

“Except upon criminal issues to be proved by the Prosecution it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the Tribunal. But reasonable satisfaction is not a state of mind that is obtained or established independently of the nature or consequent of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question, whether the issue has been proved to the reasonable satisfaction of the Tribunal. In such matters ‘reasonable satisfaction’ should not be proved by inexact proofs, indefinite testimony, or indirect inferences’.

Ms Manuell stated that the HCCC considered that appropriate orders were:

- 1) That upon a finding of professional misconduct the practitioner be reprimanded;
- 2) That he pay a fine of \$10,000;
- 3) That he pay the HCCC’s costs.

Mr Bozic on behalf of the practitioner informed the Tribunal:

- 1) That the practitioner accepted that his conduct was capable of amounting to professional misconduct;
- 2) That the practitioner accepted that a reprimand was appropriate;
- 3) That the practitioner didn't wish to make a submission to the effect that a fine of \$10,000 was inappropriate.

He did however submit that the practitioner should not have to pay the HCCC's costs and argued that each party should be ordered to pay its own costs. He pointed to the fact that there had been significant delay between the initial investigation and interview and notification to the practitioner of the proposed proceedings before the Medical Tribunal. In fact, there was a delay of some two years. There has been no explanation forthcoming as to this delay and as to why the matter didn't proceed expeditiously.

It was not suggested that any such delay affected the quantum of costs incurred by either the HCCC or the Practitioner.

No persuasive argument has been advanced as to why the Tribunal shouldn't exercise the discretion available to it to order costs against the Practitioner, if there be a finding of professional misconduct and consequent orders.

Material provided by the Practitioner as to his background demonstrates that he graduated with honours in 1968. Thereafter he served as a resident at St George Hospital and subsequently a term at Orange Base Hospital where he acted as superintendent.

In February, 1970 he purchased a practice at Campbelltown and was an HMO at Campbelltown Hospital. He had an extensive practice in obstetrics and administered anaesthetics for a number of specialists over a period of years.

He possesses various accreditations and certificates relating to his researches.

From 1970 to the present he has conducted his own general practice and has presently some 11,000 patients on his records.

Clearly he was a highly experienced general practitioner, conducting a busy practice.

His version of events is contained in his statement interview with the PSB investigator, his statement and his brief oral evidence.

He gave an account to the effect that in about 1994/95 he was approached by patients seeking to be prescribed steroids. He was aware that Dr Tony Millar, a leading sports science practitioner was an advocate of the controlled use of steroids and that he subscribed to a “Harm Minimisation” approach to the treatment of people intent on using steroids, such as body builders. He recounted his reading of some publications put out by Dr Millar.

For a time he referred such patients to Dr Millar but subsequently began meeting their requests by prescribing steroids himself.

The evidence discloses that he prescribed large quantities of anabolic and androgenic steroids to a significant number of patients over a period of years as detailed in the particulars of the complaint, contrary to the regulations referred to in such particulars. That there were numerous failures (1) to make an appropriate record in relation to the drugs prescribed in accordance with the requirements of the regulations as particularised; (2) to make a record of consultations in accordance with the regulations as particularised.

The practitioner readily admits that steroids were being prescribed for body building purposes, on request. Clearly, there was no medical requirement justifying such prescriptions. As to this part of his practice, he simply conducted an extensive and presumably lucrative activity in facilitating body builders obtain steroids without any veneer of a genuine medical purpose. It is worthy of note that those obtaining steroid prescriptions made direct payment to the practitioner and did not resort to Medicare.

The fact that he issued numerous repeat prescriptions meant that there was no supervision or check on the result of the steroid consumption. Many of his steroid patients were left to their own devices with regard to self injection.

He claimed that he would discuss with patients possible side effects and provide information about proper injection methods. Apparently he did not regard this advice as worthy of attracting a record in his notes. In addition to a physical examination he would generally refer them to a pathologist for blood tests. He did not make notes in relation to follow up consultations unless the patient demonstrated an abnormal test result.

When a test result was normal he would meet with the patient and provide him or her with a prescription but generally he did not make a record of such consultation or the issue of the prescription. In some cases there was no diagnosis recorded to found the issue of a prescription.

On occasions he would provide the patient with a prescription at the same time as he ordered a pathology test, i.e. before he had received the test result. Generally he prescribed a 12 week course of steroids – one ampule per week for injectable medication and three tablets per day for oral ingestion. He provided an original prescription with three repeats.

Simply put, a prescription would be issued to meet a patient's express desire and he may or may not have made an appropriate record as to the consultation or detailing the issue of a prescription.

His haphazard entries and numerous failures to keep appropriate records were no minor matters. There was a clear duty not only to keep records in accordance with regulations but as a matter of well recognised, proper medical practice.

In effect, it is the practitioner's claim that he was unaware of any restriction on the prescription of steroids and was further unaware of the requirements that there be appropriate intervals for repeats.

He maintains that in 1996/97 and again in 1999 he requested his practice manager, Ms Grainger, to contact the AMA and the Royal Australian College of General Practitioners in 1996/97 to find out whether these bodies had any policies regarding the prescription of steroids. He claims she informed him by words to the effect "I've spoken to them and they

say they have no definite policy”. There was no evidence from Ms Grainger.

The Tribunal does not accept the practitioner’s professed ignorance of the prohibition against the prescription of steroids for non medical use. This was not the case of a newly qualified inexperienced doctor prescribing steroids on an occasional or one-off basis. As stated, he was a highly qualified General Practitioner with a large practice, who issued a multitude of steroid prescriptions, seemingly to a stream of persons seeking to enhance their physiques.

Dr Raymond Seidler, the peer reviewer in this matter, reported:

“It is absolutely inappropriate to prescribe anabolic and androgenic corticosteroids solely in response to a patient’s request. Patients may often request medications that General Practitioners must refuse to provide.

There are many other sources apart from MIMS available to General Practitioners in relation to prescribing and clinical issues with regard to anabolic and androgenic corticosteroids and their prescription. Booklets have been produced by Drug and Alcohol Services around Sydney since the mid 1980’s when the craze for bodybuilding really began in earnest in Sydney. The previously mentioned guidelines for medical practitioners available through the NSW Medical Board and sent to every registered medical practitioner in NSW would provide clear and unequivocal regulations and guidance to General Practitioners. Weekly medical magazines such as the ‘Medical Observer’ and ‘Australian Doctor’ frequently contain warnings about the dangers of prescribing potentially dangerous drugs like anabolic androgenic steroids to patients on demand or for non-medical use. From time to time peer-reviewed journals will carry articles on the subject of non-medical use of anabolic androgenic steroids and the risks inherent in prescribing these drugs to a naïve population of body builders. I have written on the subject for current therapeutics, a journal that was sent to all GPs in Australia until 2002.

I am critical of Dr Guest for not seeking further information about prescribing of steroids. It is my impression having spoken to many hundred of GP's in an educative role around NSW that the vast majority of General Practitioners know that it is inappropriate and illegal to provide anabolic and androgenic steroids to body builders for non-medical use. There is a plethora of information on anabolic and androgenic steroids available to any GP who avails himself of the services regarding illicit drug use. There are numerous pamphlets produced by a number of drug and alcohol facilities in all parts of NSW, I have seen documents produced by the Manly Drug and Alcohol Service and by the Centre for Education and Information on Drug Addiction which were generally available. The mainstream newspapers also have articles about the dangers of using illicit anabolic steroids and the problems associated with their prescription."

The practitioner told of reading an article in an edition of the Australian Doctor of the 6th October, 2000 headed "Crimes Act is Clear. It's Illegal". That article indicated that practitioners who helped patients in the recreational use of steroids risked criminal charges.

He stated that he immediately ceased prescribing steroids and prepared a note on his letterhead in which he stated that having been informed in the said magazine that recreational steroid use is now considered illegal both in supply and usage. He went on to say that although he believed in the controlled use of steroids he had no alternative but to cease prescribing these as his registration could be in jeopardy. Attached to this notification to his patients was a copy of the extract from the Australian Doctor Magazine.

In his interview with the investigator from the PSB he said that he ceased prescribing steroids in October, 2000.

In the course of that interview he made inculpatory and frank admissions, having declined the opportunity to be legally represented at the interview and in the knowledge that his answers could be used in proceedings against him.

In his statement and in the course of his evidence before the Tribunal he claimed to have received a letter from the Health Care Complaints Commission (HCCC) in November or December 2001 in which it was stated that the HCCC had finalised its investigation and had decided to take no further action. He said that this letter was destroyed.

The HCCC has no record of such a letter.

It is to the practitioner's credit that he conceded the matters alleged in particulars 1,2 and of the complaint, that the quantities of steroids prescribed and the purposes for which they were prescribed were not in accordance with recognised therapeutic standards and not appropriate in the circumstances. Further, that he provided details of prescriptions, examinations and treatment with regard to persons nominated in the complaint.

He agreed that he had failed to make notes of consultations and admitted the inadequacy of his records.

In his statement he described the changes he has put into place since being interviewed with regard to his continuing practice. He described having significantly reduced his work load. Whereas between 1990 and 2001 he was seeing approximately 60 – 80 patients a day, he stated "Seeing a large number of patients I fell into the habit of making sparse

notes and of simply writing the patient's names on prescriptions rather than their names and addresses".

He went on to say that he is no longer a sole practitioner and has combined with others in a medical practice which he jointly owns. The record keeping system in this new practice is entirely computerised and "The software program does not allow me to leave out information in the notes during a consultation or when drawing up a prescription".

The clear impression produced by this information was that as a result of the substantial reduction in his working hours he would avoid some of the deficiencies in his procedures and note taking and record keeping. Obviously this evidence was placed before the Tribunal as a demonstration of changes in his work regime to suggest the unlikely recurrence of the claimed cause of his failure to keep proper records.

No mention was made of the fact that he was receiving psychiatric treatment and was on medication presumably as a result of the disturbance provoked by the proceedings before this Tribunal. Yet, in evidence before the Tribunal, when he was asked whether he intended to continue seeing a reduced number of patients, he went on to say that he intended to maintain his present regime or to increase his hours and patients. Clearly he was conveying that he would increase his hours and engage in additional consultations as his psychiatric condition improved.

His oral evidence was the first indication of any intention to increase his hours and engage in additional consultations.

This Tribunal is seriously concerned that if he resumes his former regime of seeing a substantial number of patients each day, bearing in mind that he was formerly engaging in some 60-80 consultations daily, that there is an appreciable risk that he will once again lapse into the system of failing to adequately record details as required by the “Poisons and Therapeutic Goods Regulations 1994 and the Medical Practice regulations 1994”.

The fact that there was virtual consensus between the HCCC and the practitioner as to the appropriate orders is not binding on the Tribunal. It has the responsibility of determining whether the practitioner’s conduct amounted to such a serious breach of the standards of medical practice so as to constitute professional misconduct and in the event of such a finding to make orders which it deems appropriate.

The role of the Tribunal is not to punish but to make orders consistent with its responsibility in exercising a protective jurisdiction in the interests of the community. A principal consideration in the exercise of this power is the maintenance of the standards of the medical profession and maintaining the confidence of the public in the profession.

The Tribunal is comfortably satisfied that all particulars of the complaint have been proven and that the practitioner’s conduct clearly establishes such a degree of misconduct as to constitute professional misconduct.

In determining appropriate orders the Tribunal has had regard to the practitioner’s cessation of his offending practices prior to his conduct being detected and his actions in advising his patients of his ceasing to prescribe steroids and the reasons therefore. These steps coupled with the extensive admissions he made when interviewed and in his statement

confirm his recognition of the grossly serious nature of his misconduct and an insight into it.

The fact that there have been no further similar breaches of his obligations over the past five years leads the Tribunal to conclude that he is unlikely to engage in similar misconduct, save for the reservations expressed in the event that he resumes his former regime in consulting with an excessive number of patients. The Medical Board may feel it appropriate to conduct audits of Dr Guest's practice in this regard.

The Tribunal has taken into account the orders suggested and considers them to be appropriate.

The orders of the Tribunal are:

- 1) That the practitioner be reprimanded;
- 2) That the practitioner be fined \$10,000;
- 3) That the practitioner pay the costs of the HCCC of and incidental to the hearing of the complaint.

_____(Signed)_____

JUDGE J C McGUIRE

_____(Signed)_____

DR D CHILD

_____(Signed)_____

DR D SUTHERLAND

_____(Signed)_____

MS G ETTINGER