

No. 40014 of 2004

In Re: Dr Edmond KWAN

And: The Medical Practice Act 1992

DEPUTY CHAIR

Her Honour Judge A AINSLIE-WALLACE

MEMBERS

Professor Susan DORSCH

Dr Guan YEO

Ms Anne COLLIER

Orders and Reasons for Determination

Order:

Pursuant to *Clause 6 of Schedule 2 to the Medical Practice Act 1992* the Tribunal has made a Non Publication Order in respect of the names of the patients referred to in the proceedings.

Background

The Health Care Complaints Commission (the HCCC) by a document dated 23rd July 2004 complains that the Doctor (the respondent) has been guilty of unsatisfactory professional conduct and/or professional misconduct in relation to his prescription of drugs referred to in Schedule 4D of the Poisons and Therapeutic Goods Act. There are 6 particulars in the complaint and in summary are;

1. That between February 1997 and August 1999 the applicant prescribed benzodiazepines and/or codeine compounds to patients (referred to in a schedule to the complaint);

without exercising responsible medical judgement

in circumstances when he knew or ought to have known that another medical practitioner was authorised under section 29 of the Poisons and Therapeutic Goods Act to prescribe drugs of addiction to the patients

for purposes that did not accord with recognised therapeutic standards

in circumstances where the practitioner knew or should have known the medications were likely to be abused.

2. Between May 1996 and January 1998 the practitioner issued prescriptions for prescribed restricted substances, namely benzodiazepines and other compounds such as codeine compounds to the patients in excess of recognised therapeutic standards. (the dates and amounts are contained in a schedule to the complaint).

3. On 13th February 1998 the practitioner inappropriately prescribed a Schedule 8 narcotic to a patient where he knew the patient had a history of narcotic addiction and had recently been abusing alcohol.

4. Between September 1998 and August 1999 the practitioner prescribed to a patient (patient FF) a prescribed restricted substance in quantities in excess of recognised therapeutic standards.

5. Between September 1998 and August 1999 the practitioner prescribed for a patient (Patient GG) a prescribed restricted substance in quantities in excess of recognised therapeutic standards.

6. During the period 1997 to 1999 the practitioner inappropriately provided religious instruction and advice to patients during or in conjunction with professional consultations.

1. On 19th June 1991 a representative of the Pharmaceutical Services Branch (the PSB) visited the respondent in relation to his provision of drugs to drug addicted and drug seeking patients. Between 1993 and 1994 the PSB received complaints about the prescribing habits of the applicant from pharmacists and in June 1994 the respondent was again spoken to in relation to his prescribing pattern. In September 1999 the PSB received further complaints concerning the respondent's prescription of benzodiazepines and similar substances.
2. On 20th October 1999 the PSB recommended that the respondent's right to prescribe Schedule 4D drugs be withdrawn, the respondent did not oppose that course.
3. The respondent has not had that prescribing right restored and there is no suggestion before the Tribunal that he has prescribed those drugs since then.
4. The essence of the first 5 matters in the complaint is that the respondent had patients who were drug addicts or who were drug dependent and who were at the same time receiving methadone from another doctor. The HCCC complains that the respondent knew or ought to have known that these patients were receiving methadone and he did not contact the doctors who prescribed the methadone for his patients to let them know that he was prescribing Benzodiazepines for them.

5. The respondent said that from 1989 (up until he surrendered his right to prescribe Schedule 4D drugs) his therapeutic approach to drug addicted patients was a slow reduction of Benzodiazepine levels until they reached therapeutic levels or a level at which the patient indicated to him that he or she no longer needed the prescription.
6. In relation to the sixth matter on the complaint, the respondent said that he also used other treatment regimes with these patients which included counselling, meditation, physical exercises and sharing the “Born Again Life” in which he prayed with the patient and referring patients to particular chapters of the Bible in which he introduced them to “Biblical Meditation” through which the patients would be able to induce endogenous opiates in substitution for drug ingestion. He said that he made it clear to these patients that he would only prescribe the Benzodiazepines on the basis of an acceptance by the patient that he would place them on a safe slow reduction of the drugs and they must take up the other facets of his treatment regime.
7. The respondent said that in relation to some of the patients referred to in the complaint, he knew that they were on the Methadone programme, others he said he asked and accepted their answer as to whether they were on it. The respondent said that in some cases he attempted to make contact with the doctor who was prescribing the Methadone but was unsuccessful. In relation to other patients he made no attempt.
8. The gravamen of this complaint is that these patients are likely to be “doctor shopping”, that is looking for doctors who are compliant in the prescription of drugs of addiction and that these patients may be using the prescribed drugs to supplement or enhance the effects of the Methadone or other street drugs or they could be selling the prescribed drugs on the street.
9. In the material tendered for the respondent, he contended that there is a body of opinion which supports the use some of the techniques he used with these patients in clinical medicine. In the result, it is a matter which does not need to be addressed because the proposed orders include counselling of the respondent on

the appropriateness of introducing matters of religion into the doctor/patient relationship.

10. On the first day of the hearing the parties agreed on proposed terms of orders which the Tribunal would be asked to make. After consideration of the material provided by both the applicant and the respondent, the Tribunal has determined that, subject to some changes, the orders proposed are appropriate to fulfil the protective functions of the Tribunal.

Discussion

11. It is abundantly clear to the Tribunal that, despite repeatedly counselling about his pattern and level of prescription of Schedule 4D drugs, the respondent continued his prescribing pattern. The Tribunal is satisfied that his treatment regime of the patients who formed the basis of the complaint fell short of the standard which is expected of a practitioner.
12. Section 37 of the *Medical Practice Act 1992* is as follows;

Section 37:

“For the purposes of this Act, “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.”

13. The respondent admitted that his treatment of the patients constituted professional misconduct and the Tribunal is satisfied to the relevant standard ¹ that the practitioner’s treatment of those patients amounted to professional misconduct.

The jurisdiction of the Tribunal is a protective not punitive one. The purpose of disciplinary proceedings is to maintain proper ethical and professional standards in protection of the community and also to protect the good standing and reputation of the profession.

14. The Tribunal is satisfied that this is a case in which the protective functions of the Act could be well served by allowing the respondent to continue to practise but to

¹ *Briginshaw v Briginshaw* (1938) 60 CLR 336. That is that the Tribunal must be comfortably satisfied on the balance of probabilities but that having regard to the serious nature of the charge and the consequences, the satisfaction cannot be produced by “inexact proofs, indefinite testimony or indirect references”.

continue the restriction on his power to prescribe. It is also appropriate to provide for supervision and counselling as conditions to his registration.

15. At the conclusion of the case, counsel for the respondent sought a departure from the usual rule as to costs in that he asked that part of the costs of the proceedings be not awarded against the respondent. The basis for that application rested on the delay between the investigation and notification of the complaint and the commencement of the complaint procedure. There was a considerable and unexplained delay between the notification of the complaint to the respondent and the commencement of the present proceedings. It was argued in support of the costs order that this level of delay should be the subject of a sanction by the court through a costs order. The costs application was refused and the reasons for that decision are contained in the transcript of proceedings of 11th August 2005
16. Orders were made on 11th August 2005 and which are annexed to these reasons for determination.

I certify that these 16 paragraphs are a copy of the reasons for determination of the Medical Tribunal.

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Acting Associate to Her Honour Judge Ainslie-

Wallace

16 August 2005

No. 40014 of 2004

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And: The Medical Practice Act 1992

DEPUTY CHAIR

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MEMBERS

Professor Susan DORSCH

Dr Guan YEO

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ORDERS

Pursuant to Section 61(1)(d) of the Medical Practice Act 1992 the Tribunal makes the following orders;

1. There is a finding of Professional Misconduct against the respondent.
2. The respondent be reprimanded
3. That the respondent's registration be subject to the following conditions;
 - (a) The respondent is not to possess, prescribe, supply or administer Schedule 4 appendix D drugs. Any future change in the respondent's authority in respect of those drugs be in accordance with the protocols established by the NSW Medical Board (*the Board*),
 - (b) The respondent is to complete a course offered by the Pharmaceutical Services Branch to ensure that he has a proper knowledge of prescribing practices and requirements particularly in respect of Schedule 4 appendix D and Schedule 8 drugs. The course is to be completed within 6 months of the date of these orders and the cost of the course to be borne by the respondent. At the conclusion of the course, the respondent is to provide to the Board evidence of his satisfactory completion of the course.

Audit

- (c) Within 6 months of having completed the course referred to in order 3(b) the respondent is to submit to an audit with particular attention to his prescribing, administering and recording of drugs of addiction and drugs

of dependence. In the course of conducting the audit, the auditor may inspect medical records, observe patient consultations, review the respondent's drug register and inspect the respondent's drug storage facilities.

- (d) The auditor is to be nominated by the Board and will make a report of the audit to the Board which can determine if any further audit or other action should be taken based on the audit report. The cost of the audit and any subsequent report is to be borne by the respondent.

Supervision

- (e) Within 1 month of the date of these orders the respondent is to nominate one or more supervisors to be approved by the Board to meet with him and to conduct an inspection of his medical records with a view to monitoring and reviewing them in order to assist the respondent in complying with the requirements of the Medical Practice Regulations 2003. The meetings are to take place at the respondent's place of practice and will continue for a period of 2 years or such other period as the Board may nominate.
- (f) The respondent and the supervisor are to meet monthly for at least 2 hours for the first 6 months and thereafter at a frequency to be determined by the Board
- (g) The respondent is to authorise the supervisor to report to the Board on the meetings. The reports to be provided monthly for the first 6 months and thereafter as determined by the Board
- (h) The supervisor is to inform the Board immediately of any concern about the respondent's compliance with the supervision requirements, the respondent's compliance with the Medical Practice Regulations 2003 or if the supervision ceases. The respondent is to authorise the supervisor to provide this information to the Board
- (i) If there is to be a change of supervisor, the respondent is to seek the Board's approval of a substitute supervisor 21 days before the date of the proposed change.

Educational Counselling

- (j) Within 3 months of the date of these orders, the respondent is to attend on a Board nominated senior General Practitioner for educational counselling about boundary setting in the Doctor/Patient relationship with particular focus on the appropriateness of giving religious instruction or advice or recommending particular religious programmes in the course of professional consultations and in relation to any other relevant issues arising from the matters before the Tribunal.

- (k) The frequency and duration of the sessions will be at the discretion of the general practitioner and the counselling will continue at the discretion of the general practitioner.
- (l) The respondent will authorise the general practitioner to provide a written report to the Board on the outcome of the educational counselling sessions.
- (m) At the conclusion of the educational counselling course, the respondent will provide a report to the Board on the matters raised with him and the benefits if any to his practice from the course of counselling.
- (n) The cost of the educational counselling and the provision of the report will be borne by the respondent.
- (o) These conditions may be varied or reviewed by the Board.

4. The respondent pay the costs of and incidental to the application.