

No. 40017 of 2004

In Re: Dr K

and: The Medical Practice Act 1992

DEPUTY CHAIR

Her Honour Judge A AINSLIE-WALLACE

MEMBERS

Dr Donald CHILD

Dr John Duncan BROWN

Associate Professor Belinda BENNETT

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.

1. By complaint dated 18th August 2004¹, the Health Care Complaints Commission (the HCCC) alleged that the respondent had been guilty of unsatisfactory professional conduct and/or professional misconduct within the meaning of *sections 36 and 37 of the Medical Practice Act 1992* in eleven respects contained in the particulars to the complaint.
2. The particulars relate to the respondent's prescription of *Schedule 4D* and *Schedule 8*² drugs to five patients. The conduct was alleged to have occurred between January 2000 and February 2001. The particulars will be referred to in summary.
3. In relation to each particular the respondent made full admissions, except for particular eleven where the respondent did not admit the complaint in relation to patients A and B. In the result nothing turns on this partial admission.

¹ Annexure A to the Reasons for Determination

² *Poisons & Therapeutic Goods Act 1966*

Patient A

4. Particular 1 in the complaint alleged that the respondent prescribed a drug of addiction, Codeine Phosphate, without holding an authority,³ for a period in excess of two months and in quantities exceeding appropriate, recognised therapeutic standards⁴ and without exercising responsible medical judgment. It was further alleged in relation to Patient A that the respondent prescribed Panadeine Forte and Diazepam for a period and in quantities in excess of recognised therapeutic standards of what is medically appropriate and/or likely to cause dependence.⁵
5. According to the respondent's notes, this patient had chronic back pain and severe recurrent headaches or migraine. The notes also reveal that Patient A had a history of amphetamine and marijuana use. The respondent had been treating Patient A since 1998 with Benzodiazepines and later, in 2000, Panadeine Forte and codeine phosphate. The respondent's notes show that he frequently advised the patient to reduce or limit his use of these drugs. It was suggested to the patient that he attend a pain clinic but he did not attend. Despite the advice and warnings given by the respondent he nevertheless continued to prescribe drugs frequently for the patient.
6. In the period covered in the particular to the complaint, the respondent prescribed an average of 200 codeine phosphate tablets each month. (In total 2820 tablets)

Patient B

7. In relation to Patient B, it was alleged that the respondent prescribed a drug of addiction (morphine sulphate) for a period in excess of recognised therapeutic standards of what is medically appropriate, without an authority and without exercising responsible medical judgment.⁶ Further, that when in possession of

³ Section 29, Poisons & Therapeutic Goods Act 1966

⁴ Section 28

⁵ Particular 2

⁶ Particular 3

the relevant authority the respondent prescribed morphine sulphate in amounts in excess of the authority.⁷

8. During the period covered by the complaint, the respondent prescribed both oral morphine sulphate (30 milligrams) in quantities of more than 100 tablets per month and injected the patient with 125 ampoules of morphine sulphate (15 milligrams). The respondent did not apply for an authority to prescribe until 8th August 2000 (which was after the regulated two month period⁸). The authority permitted him to prescribe forty morphine sulphate tablets of 30 milligrams each to the patient, the respondent prescribed many times more than that amount. The respondent did not seek an authority to administer the injections of morphine.
9. Although the notes show that the respondent advised the patient to reduce his use of this drug, the patient was not referred for pain management nor did the rate of prescription of the drug abate.

Patient C

10. It was alleged that the respondent prescribed a drug of addiction, morphine sulphate, for a period and in quantities in excess of recognised therapeutic standards of what is medically appropriate and/or likely to cause dependence and without having an authority to prescribe those drugs.⁹ Further that the respondent prescribed codeine and a benzodiazepine for a period and in quantities in excess of recognised therapeutic standards of what is medically appropriate and/or likely to cause dependence.¹⁰
11. The patient notes show that this patient had a partial leg amputation and suffered chronic, significant pain as a result. During the period referred to in the complaint, the respondent prescribed 165 morphine sulphate ampoules (30 milligrams) and at the same time prescribed morphine tablets in amounts of 100 per month. The

⁷ Particular 4. The date on the Complaint in relation to this particular was between January 2000 and January 2001 but it was conceded for the applicant that the relevant date should be 8th August 2000 to January 2001. This was not in dispute.

⁸ Section 28, *Poisons and Therapeutic Goods Act 1966*

⁹ Particular 5

¹⁰ Particular 6

respondent also prescribed a large amount (2260 tablets) of Panadeine Forte 500 milligrams and 4250 tablets of Diazepam 5milligram.

12. The patient had been referred to a pain clinic and had attended. Before the period referred to in the particular, the respondent had been advised by the clinic that a pain management regime of morphine was not appropriate. The notes show that the respondent advised the patient on many occasions to limit or reduce the use of the drugs.
13. No authority was ever sought for the prescription of the *Schedule 8* drugs.

Patient D

14. In relation to Patient D, it was alleged that the respondent prescribed codeine and a benzodiazepine for a period and in quantities in excess of recognised therapeutic standards of what is medically appropriate and/or likely to cause dependence.¹¹
15. In the period to which the particular referred, the respondent prescribed 3550 Diazepam 5 milligram tablets (443 per month) for the patient and also 1920 Panadeine Forte 500 milligram (240 per month). Although the notes show that the respondent counselled the patient against taking large quantities of tablets, he continued to prescribe for her and did not refer her for pain management or psychiatric treatment.

Patient E

16. Again, it was alleged that the respondent prescribed a drug of addiction, morphine sulphate for a period exceeding recognised therapeutic standards of what is medically appropriate and without an authority to prescribe those drugs. Further that the respondent prescribed a benzodiazepine in quantities in excess of recognised therapeutic standards of what is medically appropriate and/or likely to cause dependence and in circumstances where the respondent knew or ought to have known that the patient was abusing the medication.¹²

¹¹ Particular 7

¹² Particular 8 and 9

17. This patient had a long history of severe and frequent migraines and anxiety and stress disorder. In the period covered by the complaint, the respondent prescribed 640 tablets of morphine sulphate and at the same time prescribed 3758 tablets of Alprazolam (a *Schedule 4D* drug). Once again the notes show frequent references to reducing use but the patient was not referred for either psychiatric treatment or pain management. The respondent did not apply for an authority to prescribe the morphine.
18. Particulars 10 and 11 in the complaint allege that the respondent failed to keep a proper drug register and failed to refer Patients A, B, D and/or E for specialist pain management or psychiatric treatment.
19. In his response to the Health Care Complaints Commission (the “**HCCC**”) complaint,¹³ the respondent admitted that he had failed to comply with the Poisons & Therapeutic Goods Act and said that he had not realised how much and how frequently he had prescribed for the patients named in the complaint. He conceded that he should have refused to continue to prescribe and should have insisted on the patients’ attendance at either pain management or for psychiatric treatment. During the investigation of the matter, the respondent was interviewed¹⁴ by members of the Pharmaceutical Services Branch during which he said he found that he could not withstand the demands of the patients, some of whom were desperate, others were very difficult and refused alternate treatment options. He said that he realised that he should have then refused to treat them but did not. The respondent said that he was shocked by the amounts and frequency of the drugs he had prescribed. In relation to his failure to obtain authorities to prescribe, he said that he simply did not do it.
20. The investigation commenced on 6th February 2001 and the respondent was interviewed on 15th February 2001. At the conclusion of the interview the respondent voluntarily relinquished his rights to prescribe *Schedule 4D* and *Schedule 8* drugs and has not sought their return.

¹³ Tab 13 Exhibit A

¹⁴ Tab 8 Exhibit A

21. The Applicant sought a peer review of the matters comprising the complaint ¹⁵. The peer reviewing doctor's report indicated that the respondent's treatment would incur the moderate disapproval of his colleagues and concluded:

"these cases possibly highlight the lack of integrated pain management services in (the region) both in awareness of such services and access to them. There is difficulty in finding appropriate psychiatric assessment and support for patients who are abusing but not psychotic or mentally ill."

Respondent's Background

22. The respondent graduated in Medicine from Sydney University in 1956 and has practised since then. He commenced practice as a general practitioner in NSW in 1976.
23. From the documents tendered by the respondent ¹⁶ it appears that during the periods referred to in the complaint, he was working, in effect, as a sole practitioner. He had been in a partnership with others but over time each had retired and, it was observed,¹⁷ that he had difficulty managing the practice on his own. He was invited to join a local practice in 2003. Letters from each of the doctors in that practice indicate that he is held in high regard and is a good general practitioner who treats his patients with respect and is caring of them.
24. Since the investigation, the respondent had successfully completed a course run by Monash University on "*Issues in General Practitioner Prescribing*" which the respondent said that he found extremely helpful in understanding how he had come to prescribe as he had in the past and also in assisting him to manage patients in the future. He has also spent a considerable amount of time with the director of the area Pain Management Service and said that this has taught him ways of treating pain, even in demanding patients, without recourse to drugs.
25. The respondent said that he has found that some of his patients have continued with him even though he has told them that he is unable to prescribe certain drugs. Others have been referred to other practitioners in the area.

¹⁵ Tab 15 Exhibit A

¹⁶ Exhibit 1

¹⁷ tab 7 Exhibit 1, letter Dennis Gordon

26. In his evidence during the hearing, the respondent said that he had decided to retire from full time general practice and wished to retain his registration so that he could do occasional locum work in his area. He did not wish to have his rights to prescribe *Schedule 4D* and *Schedule 8* drugs returned.

Discussion

27. At the outset of the hearing, counsel for the Applicant indicated that the case would be limited to one of unsatisfactory professional conduct ¹⁸ (and not professional misconduct). *Section 36* is in the following form:

S 36(1) "For the purposes of this Act, unsatisfactory professional conduct of a registered medical practitioner includes each of the following:..

(a) Any conduct that demonstrates a lack of adequate knowledge, skill, judgement or care, but the practitioner in the practice of medicine.....

(m) Any other improper or unethical conduct relating to the practice or purported practice of medicine."

28. The practitioner admitted the acts alleged and conceded that they constituted unsatisfactory professional conduct. The Tribunal is satisfied to the relevant standard ¹⁹ that the practitioner is guilty of unsatisfactory professional conduct.
29. The issues at the hearing concerned the appropriate orders which should flow from this finding. Counsel for both parties also said that they had agreed on proposed orders subject to the view of the Tribunal.
30. It is abundantly clear to the Tribunal that, despite repeatedly counselling the patients referred to in the complaint about their use of the drugs prescribed, the respondent continued to prescribe for them, in effect, on demand, without any concerted attempt to find an alternate method of treating their complaints of pain. The respondent conceded in his interview and in his evidence before the Tribunal, that he felt unable, at that time, to refuse his patients demands for drugs. It is also clear that the respondent was not fully aware of the volume of drugs being

¹⁸ *Section 36(1)(a) Medical Practice Act*

¹⁹ *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".

prescribed for these patients or the frequency with which he was writing prescriptions for them.

31. Since the investigation the respondent has taken steps to ensure that his management of patients is better informed and he now has an appreciation both of alternate treatment methods and of issues which arise for general practitioners when prescribing drugs. It was clear to the Tribunal from his evidence that he has a stark awareness of the peril to patients when they are given such vast quantities of drugs which are either potentially addictive or which can otherwise be harmful to them.
32. 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. When an order for suspension or removal from practice is made, its purpose is:

“... from the public point of view, for the protection of those who require protection, and from the professional point of view, in order that abuse of privilege may not lead to loss of privilege.”²⁰
33. 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 continue the restrictions on his power to prescribe. It was also appropriate to add conditions to his registration in relation to the conduct of his practice. Counsel for the applicant prepared a list of agreed conditions²¹.
34. Counsel for the respondent made an application pursuant to clause 6 of Schedule 2 of the Medical Practice Act that the name of the respondent be not published. The applicant neither consented nor opposed that order. The Tribunal considers that in the particular circumstances of this case, it is an appropriate order to make.

²⁰ *Clyne v NSW Bar Association* (1960) 104 CLR 186 at 201-202

²¹ Annexure B to the Reasons for Determination

Orders:

Having found that the complaint establishes that the respondent has displayed unsatisfactory professional conduct:

1. the respondent is to be reprimanded;
2. that the respondent's right to practise be subject to the following conditions:
 - a) he is not to possess, supply, administer or prescribe any *Schedule 8* or *Schedule 4D* drugs;
 - b) the respondent is not to apply for an authority to prescribe either *Schedule 8* or *4D* drugs without first having obtained the written permission of the Medical Board;
 - c) the respondent must not work as a sole practitioner in general practice;
 - d) the respondent is to notify the Medical Board of his place of practice from time to time and must notify the Medical Board in writing of any intended place of practice seven days before commencing work in that practice;
 - e) the respondent is to provide a copy of these orders to each practitioner in any practice in which he may be working from time to time;
 - f) within twelve months of the date of these orders, the respondent must complete a course offered by the Pharmaceutical Services Branch to ensure that he has a proper knowledge of prescribing practises and requirements. The respondent to bear the cost of attending the course and is to provide written evidence to the Medical Board of his satisfactory completion of the course;

g) these conditions may be reviewed by the Medical Board.

3. That no material be published which has the effect of disclosing the name and address of the respondent.

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