

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 G YEO

DR C BERGLUND, PhD

NO. 40023/05 – DR MICHAEL SAVILLE

REASONS FOR DETERMINATION

5TH DECEMBER, 2005

The Medical Tribunal has before it an appeal filed by Dr Michael Saville against conditions imposed upon him resulting from orders made by a Professional Standards Committee (“the Committee”) on 26th April, 2005.

Set out herein is the Notice of Appeal.

1. Dr Saville appeals pursuant to s.87 of the Medical Practice Act against the order imposing conditions on his rights to practice made by a Professional Standards Committee on or about 26 April 2005 and notified to the Appellant on or about 30 April 2005.

Grounds of Appeal

- (i) The conditions are excessive and unnecessary in light of the nature and extent of the unchallenged findings of unsatisfactory professional conduct.

The Notice of Appeal sets out the orders sought, i.e.

Orders

- (i) The decision of the Professional Standards Committee imposing conditions on the Appellant's right to practice be set aside.
- (ii) Such further or other order as the Medical Tribunal sees fit.
- (iii) Costs.

Placed before the Tribunal is an Agreed Statement of Facts and proposed Consent Orders as agreed to by the Appellant and the Respondent.

The Tribunal has considered the material placed before it including the evidence tendered before the Professional Standards Committee and its findings and orders.

The Appeal, in effect, sought to set aside the conditions imposed by the Professional Standards Committee on the asserted basis that they were excessive. This Tribunal does not completely accept that position. Whilst it agrees that some of the orders made are no longer appropriate and necessary, it does not consider that the proposed Consent Orders afford adequate protection to the public.

The Tribunal is firmly of the opinion that the orders of the Professional Standards Committee providing that:

“He is to only practise in a group general practice (a group having 3 or more medical practitioners);

He is to provide at least one other medical practitioner in any group practice in which he practises medicine, with a copy of the conditions on his registration;

He is to provide evidence in a form that is acceptable to the Board, and within a reasonable time limit set by the Board, that he has provided at least one other medical practitioner in any group practice in which he practises medicine, with a copy of the conditions on his registration.”

are appropriate and should continue in force.

The practitioner, having demonstrated his fallibility with regard to boundary violations, it is important that the prospect of further such violations be minimised and guarded against.

Boundary violations are not restricted to those engaged in psychiatric practice. They can just as easily occur in doctors conducting a general practice.

It is considered that the Practitioner be subject to the discipline and supervision which is inherent in practising in conjunction with others who will be in a position to observe possible boundary violations.

Further, the Practitioner would have the advantage of the guidance and counsel of those with whom he associates in practice.

Members of the public are entitled to have every reasonable safeguard to their welfare and to this end the Tribunal requires that their interests be

advanced by the retention of the conditions imposed by the Professional Standards Committee as outlined herein.

The Medical Tribunal is charged with the responsibility of making orders appropriate to the interests of the community and designed to ensure the maintenance of the standards of the medical profession and maintaining the confidence of the public in the profession

The Tribunal in effect informed the parties that it believed appropriate that the orders of the PSC as set out herein be retained and form part of the Consent Orders. Mr Lynch on behalf of the practitioner opposed their retention and Mr Griffin on behalf of the HCCC did not consent to their retention. Mr Lynch stated that he did not wish to adduce further evidence in support of his opposition to the course proposed by the Tribunal.

This is not a consent jurisdiction and if the Tribunal considers that the Consent Orders sought by the parties are inadequate, then it has the duty

to reject them and to impose such further orders as are consistent with the interests of the practitioner's patients.

The Tribunal makes the following orders:

1. The Appeal is allowed.
2. The decision of the Professional Standards Committee dated 26 April 2005 imposing conditions on the Appellant's right of practice be set aside.
3. In lieu of this decision the following orders be imposed.
4. The Appellant is severely reprimanded.
5. The following conditions be placed on the Appellant's registration:
 - (a) The Appellant to notify the New South Wales Medical Board ("the Board) twenty eight (28) days prior to any return to the practice of Psychiatry and/or Psychotherapy of his intention to return to practice in these areas.
 - (b) In the event that the Appellant returns to the practice of Psychiatry and/or Psychotherapy he is to submit to supervision of his practice, by a Board approved Supervisor, at the level determined by the Board, for a period of two (2) years. Such Supervisor to provide a written report to the Board of his supervision of the Appellant at six (6) monthly intervals.
 - (c) For a period of two(2) years from the date of any return to the practice of Psychiatry and/or Psychotherapy the Appellant is to submit to review interviews conducted by the Board at a frequency to be determined by the Board.
 - (d) The Appellant is to authorise the Board to provide a copy of these Consent Orders to his Supervisor should he return to the practice of Psychiatry and/or Psychotherapy.

- (e) Prior to the Appellant returning to the practice of Psychiatry and/or Psychotherapy he undergo such further education concerning the issues of transference/counter transference and boundaries as determined by the Board.
 - (f) The Appellant is to only practise in a group general practice (a group having 3 or more medical practitioners).
 - (g) The Appellant is to provide at least one other medical practitioner in any group practice in which he practises medicine, with a copy of the conditions on his registration.
 - (h) The Appellant is to provide evidence in a form that is acceptable to the Board, and within a reasonable time limit set by the Board, that he has provided at least one other medical practitioner in any group practice in which he practises medicine, with a copy of the conditions on his registration.
6. That any application for review of these orders be reviewed by the Medical Board.
7. Each party to pay its own costs.

JUDGE J C McGUIRE

DR D CHILD

DR G YEO

DR C BERGLUND, PhD