

**IN THE DISTRICT COURT OF  
NEW SOUTH WALES  
MEDICAL TRIBUNAL**

**No 40015/03**

**THE MEDICAL PRACTICE ACT 1992**

**IN RE**

**DR JOSHUA DEVSAM**

DEPUTY CHAIRPERSON

HER HONOUR JUDGE M SIDIS

MEMBERS

DR KATHERINE ILBERY  
MS JENNIFER HOUEN  
DR NEWMAN HARRIS

COUNSEL for the Commission

S BECKETT

COUNSEL for the Practitioner

M C AINSWORTH

**DATE OF DETERMINATION**

10 MARCH 2005

**SUPPRESSION 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 any matter capable of identifying the patients described in these reasons as Patients A to P inclusive.

**ORDERS**

1. The practitioner is severely reprimanded.
2. The practitioner is fined the sum of \$10,000.
3. In accordance with the statement of intent made by the practitioner to the Tribunal, the practitioner is to provide to the Royal Australian College of General Practitioners and Bond University copies of the

Particulars of the Complaint brought against him by the Commission, and of the Tribunal's findings.

The practitioner is to provide to the Royal Australian College of General Practitioners and Bond University a copy, certified by the Registrar of the New South Wales Medical Board, of the conditions imposed upon his registration as a medical practitioner in New South Wales.

This order to be complied with by not later than 28 days after the date of publication of these Reasons.

4. The practitioner is to comply with the following conditions imposed upon his registration as a medical practitioner:
  - (1) Dr Devsam is not to seek the return of a Schedule 8 drug authority without the consent of the New South Wales Medical Board (“the Board”).
  - (2) Dr Devsam is not to seek the return of the Schedule 4 Appendix D drug authority without the consent of the Board.
  - (3) Dr Devsam is to work only in a practice with at least one other registered medical practitioner always working on site.
    - (i) Dr Devsam is to inform any practitioner who is working on site while Dr Devsam is working of his conditions 1, 2, 3 and 6.
    - (ii) Dr Devsam is to forward to the Board within seven days of commencing employment a copy of conditions 1, 2, 3 and 6 signed by the aforementioned practitioner(s).

- (iii) Dr Devsam authorises the practitioner(s) above to immediately notify the Board of any concern with Dr Devsam's compliance with these conditions or his clinical performance.
- (4) Dr Devsam is to undertake relevant CME activities through the Royal Australian College of General Practitioners ('RACGP') Quality Assurance & Continuing Professional Development ('QA & CPD') Program with such CME to consist of 100 points per 12 month period. These activities must include, but not be limited to courses concerning prescription of drugs and drug abuse.
- (5) Dr Devsam is to provide the Board at three monthly intervals a copy of his QA & CPD Credit Point Statement issued by the RACGP and, at the same time, he is to provide the Board with an outline of the programs he intends to undertake for the next three month period.
- (6) Dr Devsam is not to prescribe for self-medication or for the medication of family members Schedule 4 Appendix D or Schedule 8 drugs.
- (7) These conditions may be varied at the discretion of the Board.
5. The practitioner is to pay the Commission's costs of the proceedings before the Tribunal. This order is suspended for 7 days to allow the practitioner to list the matter before the Tribunal for a further argument on the issue of costs should he wish to do so.
6. The Tribunal recommends that condition 9 imposed on the practitioner's registration as a Medical Practitioner in New South Wales by the New South Wales Medical Board as set out in paragraph 3.6 of these Reasons be varied to read as follows:

To attend for random urine drug screening in accordance with the Board's protocol (a copy of which is included in the Participant's Handbook). Results of the Urine Drug Screening to

be forwarded to the Board nominated and treating practitioners and to the Board. Urine Drug Screening is to be at the practitioner's expense.

7. The Tribunal publishes its reasons.
8. Exhibits may be released.

## SUPPRESSION 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 any matter capable of identifying the patients described in these reasons as Patients A to P inclusive.

## DETERMINATION

### 1. NATURE OF COMPLAINT

- 1.1 Pursuant to the *Medical Practice Act 1992* (the Act), the Tribunal is enquiring into a Complaint<sup>1</sup> of the Commissioner, Health Care Complaints Commission, concerning the professional conduct of Joshua Devsam (the practitioner).

The Commissioner complains that the practitioner, being a medical practitioner registered under the Act, has been guilty of professional misconduct or unsatisfactory professional conduct within the meaning of ss 36 and 37 of the Act in that he demonstrated a lack of adequate knowledge, skill, judgment or care in the practice of medicine or is guilty of unethical or improper conduct relating to the practice of medicine.

The Complaint and the Particulars of Complaint, with the amendments made on 26 July 2004, are attached as Appendix A to these reasons.

### 1.2 Unsatisfactory Professional Conduct

The Complaint falls to be determined under Section 36 (1) (a) of the Act which provides:

#### ***Meaning of 'unsatisfactory professional conduct'***

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<sup>1</sup> Exhibit A

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

(a) **Lack of skill etc**

*Any conduct that demonstrates a lack of adequate knowledge, skill, judgment or care, by the practitioner in the practice of medicine.*

### 1.3 Professional Misconduct

Section 37 of the Act defines professional misconduct as:

*“...unsatisfactory 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 obligations of medical practitioners are encapsulated by Priestley JA in his minority judgment in *Richter v Walton*<sup>2</sup> in the following terms:

*“The degree of trust which patients necessarily give to their doctors may vary according to the condition which takes the patient to the doctor. Even in regard to the most commonplace medical matters, the trust a patient places in a doctor is considerable. In some cases, of which the present seems to be an example, the patient’s trust cannot help but be almost absolute. The doctor’s power in regard to the patient in such cases is also very great. I do not mean power in the abstract way but as a matter of fact; the extent of the power will vary according to the temperament of the patient, but the doctor with some patients and for limited periods, because of the relationship in which they are temporarily placed, is in a position to do whatever the doctor wants with the body of the patient. This is one of the reasons why doctors are subject to correspondingly great obligations and are expected to maintain high standards; all this being very much in the public interest.”*

The majority decision in *Richter v Walton* was over-ruled in *Health Care Complaints Commission v. Litchfield*<sup>3</sup> where it was stated that the dissenting judgment of Priestley JA was entirely correct.

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2 NSW Court of Appeal, unreported, 15.7.93

3 41 NSWLR 630 @ 639

#### 1.4 Onus and Standard of Proof

After reference to *Rejtek v McElroy*<sup>4</sup> the Court of Appeal accepted in *Bannister v Walton*<sup>5</sup> that the standard of proof requires that the Tribunal be ‘*comfortably satisfied on the balance of probabilities*’. The Commissioner bears the onus of satisfying the Tribunal that the Complaint has been proved to this standard.

- 1.5 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*<sup>6</sup>. 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 consequence 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.”*

- 1.6 The proceedings in this matter were heard on 26 – 29 July 2004 and 22 September 2004.

## 2. LEGISLATION

- 2.1 The Complaint referred to the following statutory provisions:

### ***Poisons and Therapeutic Goods Act 1966***

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4 (1965) 112 CLR 517

5 (1993) 30 NSWLR 699

6 (1938) 60 CLR 336

### Section 27

*In this Division:*

**approved prescriber** means a medical practitioner approved under section 28A as a prescriber of drugs of addiction.

**drug dependent person** means a person who has acquired, as a result of repeated administration of:

- (a) a drug of addiction, or
- (b) a prohibited drug within the meaning of the Drug Misuse and Trafficking Act 1985,

*an overpowering desire for the continued administration of such a drug.*

### Section 28

*Except as may be authorised by the regulations, a medical practitioner shall not prescribe for or supply to:*

- (a) any person a drug of addiction (not being a drug of addiction that may be prescribed or supplied in accordance with paragraph (c) of this section) for continuous therapeutic use by that person for a period exceeding two months or for a period which, together with any other period for which he or she has prescribed that or any other such drug or, together with any other period for which that or any other such drug has, to his or her knowledge, been prescribed or supplied by any other medical practitioner, would result in that drug, or that drug together with any other such drug being prescribed for continuous therapeutic use by that person for a period exceeding two months;
- (b) any person who in his opinion is a drug dependent person any drug of addiction (not being a drug of addiction that may be prescribed or supplied in accordance with paragraph (c) of this section); or
- (c) any person any drug of addiction prescribed for the purposes of this paragraph,

*unless he so prescribes or supplies that drug in accordance with an authority in respect of that person given to him by the Secretary under section 29 of this Act.*

### Section 29

- (1) An application for the authority of the Secretary referred to in section 28 of this Act shall:

- (a) *be in writing and be signed by the medical practitioner who proposes to prescribe or supply the drug of addiction;*
- (b) *be made in or to the effect of the prescribed form;*
- (c) *contain such information as is provided for by the prescribed form; and*
- (d) *be enclosed in a sealed envelope marked "Confidential", and be lodged with, or forwarded by registered mail to, the Secretary.*

...

- (3) *The Secretary may give an authority for the medical practitioner by whom any such application is made to prescribe for or to supply to the person to whom the application relates any drug of addiction specified in that authority for the purpose of treatment of that person.*

...

- (5) *An authority (whether or not a temporary authority):*
  - (a) *shall specify the quantity of the drug of addiction that may be so prescribed or supplied by the medical practitioner;*
  - (b) *shall specify the period which any drug may be so prescribed or supplied;*
  - (c) *may be given subject to such conditions as the Secretary thinks fit and specified as in the authority; and*
  - (d) *shall be in writing and be signed by the Secretary or by an officer of the Department of Health authorised generally or specially by the Secretary to do so unless, in a case of emergency, it is given verbally.*

### ***Poisons and Therapeutic Goods Regulation 1994***

#### ***Formal Prescriptions***

*Clause 82 (as at the time of the conduct of the practitioner under inquiry)*

- (1) *A person who issues a prescription of a drug of addiction must ensure that the prescription includes the following details:*
  - (a) *the date on which it is issued;*
  - (b) *the name and address of the patient ...;*
  - ...
  - (d) *adequate directions for use;*
  - (e) *the maximum number of times the drug may be supplied on the prescription;*

(f) *the intervals at which the drug may be supplied on the prescription;*

...

(h) *if the prescription is issued elsewhere than at a hospital, the name and designation of the person by whom it is issued and the address and telephone number of the premises at which it is issued.*

(2) *The details referred to in sub-clause (1)(a)-(f) must be made out:*

(a) *in the handwriting of the person by whom the prescription is issued; or*

(b) *in such other manner as may be approved for the time being by the Director General*

*and the prescription must be signed by the person by whom it is issued.*

### **Records of Prescriptions**

Clause 84:

(1) *A medical practitioner, dentist or veterinary surgeon who prescribes a drug of addiction must make a record of the following particulars:*

(a) *the name, strength and quantity of the drug prescribed and the date on which it is prescribed;*

(b) *if the drug is intended for the treatment of a person, the name and address of the person to be treated;*

...

(d) *the maximum number of times the drug may be supplied on the prescription;*

(e) *the intervals at which the substance may be supplied on the prescription;*

(f) *the directions for use, as shown on the prescription.*

(2) *Records must be kept at the surgery, hospital or office of the person prescribing the substance.*

### **Drug Misuse and Trafficking Act 1985**

#### **Obtaining prohibited drug by false representation**

Section 17

*A person who knowingly by any false representation (whether verbal, or in writing, or by conduct), obtains or attempts to obtain a prohibited drug from a medical practitioner, nurse practitioner, midwife*

*practitioner, dentist, pharmacist or veterinary surgeon is guilty of an offence.*

- 2.2 Reference was also made in Particular 5 of the Complaint to s 23 of the *Poisons Act*. This has been assumed to be an erroneous reference to a legislative provision but, in the result, it has proved to be of no relevance.
- 2.3 The Complainant also relied upon the following provisions of Schedule 2 of the *Medical Practice Act 1992*:

**Clause 2(2) General requirements as to content**

- (1) *In general, the level of detail contained in a record must be appropriate to the patient's case and to the medical practice concerned.*
- (2) *A record must include sufficient information concerning the patient's case to allow another registered medical practitioner to continue management of the patient's case.*
- (3) *All entries in the record must be accurate statements of fact or statements of clinical judgment.*

**3. BACKGROUND**

- 3.1 The practitioner was born in India in 1953. He came to Australia in 1972 at the age of 19. He was awarded the degrees of Bachelor of Medicine and Bachelor of Surgery by the University of New South Wales in November 1991.
- 3.2 He was first registered with the New South Wales Medical Board in December 1993.
- 3.3 In May 1997, following an Impaired Registrants Panel inquiry, the practitioner was included in the Impaired Registrants Program and agreed to the imposition of the following conditions upon his registration as a medical practitioner in New South Wales:

- (a) *To abstain from cannabis and any other medication or drug unless prescribed by his treating practitioners.*
- (b) *Not to prescribe for self-medication.*
- (c) *To attend for random urinalysis in accordance with the Board's protocol.*
- (d) *To attend for treatment by a psychiatrist of choice, experienced in treatment of drug abuse, at a frequency to be determined by the treating doctor. To authorise the treating psychiatrist to inform the Board of termination of treatment or if there is a significant change in health status.*
- (e) *To attend for review by Dr Woodforde, the Board-nominated psychiatrist, initially on a six monthly basis, at the Board's expense.*
- (f) *Attend a Review Interview at the Board in six months.*
- (g) *To attend local Continuing Education meetings at least monthly.*
- (h) *These conditions may be eased at the discretion of the Board of the Health Committee at such time it considers variance is appropriate.*

3.4 In March 2000 the practitioner moved to Queensland. The Medical Board of Queensland undertook to monitor the practitioner on conditions identical to those imposed by the NSW Board. The practitioner relinquished his registration in Queensland on 1 February 2001.

3.5 In December 2000 the practitioner commenced practice at Tweed Heads South at 7 Days and Nights Surgery and Healthpoint Medical Centre. He ceased practice at the 7 Days and Nights Surgery in about February 2001. He remains in practice at the Healthpoint Medical Centre.

3.6 Following notification of concerns by the Pharmaceutical Services Branch in November 2001, the New South Wales Medical Board conducted an inquiry under s 66 of the *Medical Practice Act 1992*. As a result of that inquiry the following conditions, which continue to apply, were placed upon his registration as a medical practitioner in New South Wales.

1. *To attend local Continuing Education meetings at least monthly.*
2. *Dr Devsam's Schedule 8 drug authority is to be withdrawn by the Pharmaceutical Services Branch (should this not already have occurred). Any future change in my (sic) schedule 8 authority will be in accordance with the Board's procedures.*
3. *Dr Devsam's Schedule 4 Appendix D drug authority is to be withdrawn by the Pharmaceutical Services Branch (should this not already have occurred). Any future change in my (sic) Schedule 4 Appendix D authority will be in accordance with the Board's procedures.*
4. *Dr Devsam is to work only in a practice with at least one other registered medical practitioner always working and on site. Dr Devsam is to advise the other practitioner(s), who will be expected to be working and on site whilst Dr Devsam is working, of conditions 1, 2, 9, 10 and 11. Dr Devsam is to forward to the Board within seven days of commencing employment a copy of conditions 1, 2, 9, 10 and 11 signed by the aforementioned other practitioner(s). The other practitioner(s) undertake to immediately notify the Board of any concern they may have with Dr Devsam's compliance with these conditions or his clinical performance.*
5. *These conditions may be eased at the discretion of the Board or the Health Committee at such time as it considers variance is appropriate.*
6. *Not to prescribe for self-medication.*
7. *Not to self-administer any Schedule 4 or Schedule 8 drugs [of the NSW Poisons List] and Schedule 1 [of the Drug Misuse and Trafficking Act] or any narcotic derivative, non-prescription compound analgesics or cold medication unless prescribed and taken at the direction of his treating practitioner. To notify the Board-nominated psychiatrist and the Board of any instance of illness requiring the administration of medications described above. In addition Dr Devsam is to provide the Board with written confirmation of such treatment from the treating practitioner within seven days of the prescription being written.*
8. *To attend for treatment by a psychiatrist of Dr Devsam's choice, at a frequency to be determined by the treating psychiatrist. To authorise the treating psychiatrist to inform the Board of failure to attend for treatment, termination of treatment or if there is a significant change in health status.*
9. *To attend for thrice weekly Urine Drug Screening in strict accordance with the Board's protocol (a copy of which is included in the Participant's Handbook). Results of the Urine Drug Screening to be*

*forwarded to the Board nominated and treating practitioners and to the Board. Urine Drug Screening is to be at Dr Devsam's expense.*

10. *To attend for review by Dr Morse, the Board nominated Psychiatrist on a six monthly basis, at the Board's expense.*
11. *To attend a Review Interview at the Board at six monthly intervals or as otherwise directed by the Board.*
12. *To authorise the Board to forward copies of the S66 Inquiry report, Board Review Interview reports and other information relevant to my (sic) impairment to the Board nominated Practitioners and my (sic) treating practitioners.*

3.7 The Tribunal noted evidence concerning the referral of the practitioner to the Impaired Registrants Program in 1997 and the conditions imposed by the Panel in 1997 and the NSW Medical Board in 2001 requiring the practitioner to consult with psychiatrists.

The Tribunal therefore expressed concern, having regard to the nature of the Complaint, that no material had been provided to it concerning the history of the practitioner's mental health and his current condition.

As a result Exhibit J, dealing with the prior history, was admitted into evidence. After a period of adjournment, Exhibit 6 was admitted into evidence to deal with the practitioner's current condition.

3.8 The material in Exhibit J provided a history of psychiatric illness generated by the abuse of cannabis. The general theme of the material indicated that, when psychiatrically well, the practitioner was *hardworking, competent and respected*. It was recorded that the practitioner was compliant with conditions imposed on his continued practice of medicine.

3.9 The practitioner's marriage failed in 1998 and he suffered a subsequent period of personal stress. He moved to Queensland and married Patient A in 2000.

- 3.10 Reports of Dr Morse, the Board nominated psychiatrist, dating between January 2002 and January 2004, indicated continuing compliance such that Dr Morse by July 2003 considered it appropriate to relax the requirement for urine testing three times weekly to random testing.
- 3.11 The practitioner's psychiatrist, Dr Woodforde, provided reports from March 1997 to June 2004. In the initial phases of his treatment of the practitioner Dr Woodforde expressed some concerns as to the level of his insight, particularly in respect of his treatment of Patient A, his wife, and other relatives with prescriptions of pethidine. In December 2002 Dr Woodforde reported that the practitioner had gained some insight into his situation and from that date Dr Woodforde stated that drug screening requirements for the practitioner could be conducted on a random basis. In June 2004 Dr Woodforde reported that the practitioner had been dealing appropriately with the stress of the pending proceedings before the Medical Tribunal.
- 3.12 Exhibit J included a letter from the Queensland Medical Board dated 21 June 2000 to the practitioner pointing out that he had failed to attend for drug screening in May 2000 without satisfactory explanation and that he had repeatedly tested positively to benzodiazepines without providing evidence that they had been prescribed for him. It has already been noted that on 1 February 2001 the practitioner voluntarily relinquished his registration as a medical practitioner in Queensland.
- 3.13 Exhibit 6 comprised a report of Dr Mark Whittington dated 3 September 2004. Dr Whittington stated that he had treated the practitioner since August 2000 on a regular basis. His diagnosis was of Mood Disorder which had been successfully treated with the drug Epilim. Dr Whittington did not accept the diagnosis previously made of Bipolar Affective Disorder. He stated that the practitioner was currently leading a happy and settled life, that he displayed insight into the inappropriate nature of his prescribing practices and that he

had expressed remorse concerning his behaviour. He had also indicated a commitment to dealing with these problems to avoid a recurrence.

Although Epilim had successfully treated the Mood Disorder, Dr Whittington accepted the recommendation of the practitioner's gastroenterologist that its use be ceased because of its side effects. In this circumstance, Dr Whittington stated that ongoing psychiatric support will be required.

It was Dr Whittington's opinion that the thrice weekly drug screening requirement was now excessive but that the restrictions on the capacity of the practitioner to prescribe should be continued.

#### **4. The Complaint – Generally**

4.1 The Pharmaceutical Services Board reported<sup>7</sup> on 28 September 2001 as follows:

- (a) The practitioner had been investigated in 1995 as regards his prescription of quantities of benzodiazepines and drugs of addiction to drug dependent persons.
- (b) A letter<sup>8</sup> had been sent to the practitioner on 8 May 1995 describing the practices adopted by drug dependent persons in presenting to medical practitioners in their efforts to secure prescriptions for drugs of addiction. The letter reminded the practitioner of the provisions of s 28 of the *Poisons Act* and of the need to obtain authority from the Department of Health to prescribe *Schedule 8* drugs. Reference was made to the practitioner's having prescribed drugs of addiction *outside the terms of an authority issued to you by the Department.*

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7 Exhibit B, Tab 2

8 Exhibit B, Tab 3

Enclosed with the letter were a copy of *Schedule 8* and a document titled *Recognising and Handling Addicts, Notes for Medical Practitioners*.

- (c) On 10 May 2001, after receiving information concerning the prescription by the practitioner of drugs of addiction to Patient D, Mr Bruce Battye of the Pharmaceutical Services Branch telephoned him. Mr Battye's note<sup>9</sup> of the conversation reads as follows:

*Advised Dr Devsam by telephone today that another doctor held authority for [Patient D] and because he or Dr Balin did not hold/or have applied for authority he should not be prescribing for her, but referred back to the doctor who held authority. (Also mentioned BZDs).*

- (d) Further information was received on 23 May 2001 to the effect that the practitioner was continuing to prescribe morphine for Patient D.
- (e) The report also indicated that the Pharmaceutical Services Branch was concerned about large quantities of pethidine ampoules which were being prescribed by the practitioner as well as his prescription of benzodiazepines.
- (f) Two officers of the Pharmaceutical Services Branch conducted an interview with the practitioner on 15 August 2001.

4.2 In a record of the interview<sup>10</sup> and in his evidence to the Tribunal the practitioner stated that he did not recall having received the letter of 8 May 1995. In his response<sup>11</sup> to the Complainant dated 1 July 2002 the practitioner

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9 Exhibit G

10 Exhibit B, Tab 4

11 Exhibit B, Tab 9, p.8

did recall receiving notice *drawing attention to Benzodiazepines used, outside terms of authority.*

4.3 It was very apparent that the practitioner had attempted to deceive investigating authorities and the Tribunal concerning his use of false addresses on prescriptions issued to Patients A and B. Ultimately, he conceded that the addresses were false and deliberately used to facilitate access to NSW pharmacies in order to secure the drugs prescribed.

## 5. Complaint concerning Patient A

5.1 Particulars of the Complaint which concerned patient A were as follows:

1. *During the period August 2000 to July 2001, the practitioner, on the dates and in the quantities shown in the schedule annexed hereto and marked with the letter "A" prescribed a drug of addiction, namely Pethidine, for Patient A;*
  - (a) *without obtaining an authority in respect of Patient A from the New South Wales Department of Health under Section 29 of the Poisons and Therapeutic Goods Act 1966, in circumstances where the practitioner had formed the opinion that Patient A was at the time a drug dependent person within the meaning of Section 27 of the Poisons and Therapeutic Goods Act 1966 or, in the exercise of responsible medical judgment, the practitioner should have formed the opinion that Patient A was a drug dependent person, contrary to the requirements of Section 28 (b) of the Poisons and Therapeutic Goods Act 1966,*
  - (b) *for a period exceeding recognised therapeutic standards of what is medically appropriate,*
  - (c) *for a period exceeding two months without having applied for or been given an authority under Section 29 of the Poisons Act,*
  - (d) *in quantities in excess of recognised therapeutic standards of what is medically appropriate,*
  - (e) *without exercising responsible medical judgment.*
3. *During the period August 2000 to July 2001, the practitioner inappropriately prescribed and/or administered pethidine to Patients A and B when such patients were related to the practitioner.*

6. *The practitioner failed to maintain adequate records in relation to his prescription of drugs of addiction to Patients A, B and C, in contravention of clause 84 of the Poisons and Therapeutic Goods Regulations 1994.*
7. *the practitioner failed to maintain adequate medical records in relation to his treatment of Patients A, B and C.*

5.2 The practitioner and Patient A were married in October 2000. In August 2000 he excised a ganglion from Patient A's left wrist following which she complained of severe pain. He prescribed pethidine.

5.3 Between August 2000 and July 2001 the practitioner issued 69 prescriptions for a total of 345 ampoules, the quantity comprising 34,500 mg of pethidine. The practitioner's evidence indicated that in fact larger quantities of the drug were made available to Patient A.

5.4 It was acknowledged by the practitioner and Patient A that her addiction to pethidine developed soon after the drug had initially been administered to her. Patient A conceded that by the end of 2000 she was regularly using 2 to 3 and up to 4 ampoules per day.

5.5 Notwithstanding her obvious addiction to the drug, no authority was obtained for the continued prescription of pethidine to Patient A as required by the *Poisons and Therapeutic Goods Act 1966*.

5.6 No record was made of the prescription of pethidine to Patient A prior to March 2001. The evidence established that incomplete records were made after that date in that not all prescriptions were recorded and that in many instances no record was made of the purpose of consultations or of diagnoses made.

## 6. Complaint concerning Patient B

6.1 Particulars of the Complaint which concerned Patient B were as follows:

2. *During the period December 2000 and June 2001, the practitioner, on the dates and in the quantities shown in the schedule annexed hereto and marked with the letter "B" prescribed a drug of addiction, namely Pethidine, for Patient B:*
  - (a) *in quantities in excess of recognised therapeutic standards of what is medically appropriate;*
  - (b) *without exercising responsible medical judgment.*
3. *During the period August 2000 to July 2001, the practitioner inappropriately prescribed and/or administered pethidine to Patients A and B when such patients were related to the practitioner.*
5. *During the period August 2000 to July 2001, the practitioner issued prescriptions for a drug of addiction, namely Pethidine, on the dates and in the quantities shown in the schedules annexed hereto and marked with the letters "B" and "C" in the names of persons for whom the relevant drug of addiction was not intended, and in so doing, caused or permitted the Pethidine to be obtained from pharmacists,*
  - (a) *by knowingly making false representations as to the names and addresses of the persons for whom the drug of addiction was purportedly intended; and*
  - (b) *contrary to Section 17 of the Drug Misuse and Trafficking Act 1985 and Section 23 of the Poisons Act 1966.*
6. *The practitioner failed to maintain adequate records in relation to his prescription of drugs of addiction to Patients A, B and C, in contravention of clause 84 of the Poisons and Therapeutic Goods Regulations 1994.*
7. *The practitioner failed to maintain adequate medical records in relation to his treatment of Patients A, B and C.*

6.2 Patient B is the practitioner's mother in law and the mother of Patient A.

- 6.3 Between 18 December 2000 and 14 June 2001 the practitioner issued 18 prescriptions of 5 x 100 mg ampoules in the name of Patient B.
- 6.4 The practitioner stated the purpose of the prescriptions was the treatment of migraine headaches, although no records of consultations were made. No evidence was called from Patient B in respect of the nature of her illness and the extent to which it demanded treatment by the prescription of pethidine. There is no record that the practitioner considered any alternative treatment for Patient B's migraine headaches.
- 6.5 Again it appears to have been suggested that the practitioner, in prescribing this drug for Patient B, failed to resist pressure from his wife and mother in law, indicating the inappropriateness of his treatment of Patient B.
- 6.6 The evidence<sup>12</sup> established that, in fact, substantial quantities of the pethidine prescribed for Patient B were administered to Patient A. The practitioner, however, denied that he had issued prescriptions for Patient B for pethidine which was intended for Patient A or that those prescriptions were used as a device to avoid detection of the quantities then being administered to Patient A.
- 6.7 It has already been noted that, notwithstanding his initial evidence to the contrary, the practitioner ultimately conceded that he used false addresses on prescriptions written for Patients A and B. Particular 5 of the Complaint related only to Patients B and C but was not pressed in respect of Patient C. The practitioner's explanations for the use of false addresses were unconvincing and inconsistent. It was very apparent that the address at 22 Duffy Street, Tweed Heads, to the practitioner's knowledge, had no connection with Patient B.

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12 Transcript 173-175

## 7. Complaint concerning Patient C

7.1 Particulars of the Complaint which concerned patient C were as follows:

4. *During the period April 2000 and June 2001, the practitioner, on the dates and in the quantities shown in the schedule annexed hereto and marked with the letter "C" prescribed a drug of addiction, namely Pethidine, for Patient C:*

- (a) in quantities in excess of recognised therapeutic standards of what is medically appropriate;*
- (b) without exercising responsible medical judgment.*

5. *During the period August 2000 to July 2001, the practitioner issued prescriptions for a drug of addiction, namely Pethidine, on the dates and in the quantities shown in the schedules annexed hereto and marked with the letters "B" and "C" in the names of persons for whom the relevant drug of addiction was not intended, and in so doing, caused or permitted the Pethidine to be obtained from pharmacists,*

- (a) by knowingly making false representations as to the names and addresses of the persons for whom the drug of addiction was purportedly intended; and*
- (b) contrary to Section 17 of the Drug Misuse and Trafficking Act 1985 and Section 23 of the Poisons Act 1966.*

6. *The practitioner failed to maintain adequate records in relation to his prescription of drugs of addiction to Patients A, B and C, in contravention of clause 84 of the Poisons and Therapeutic Goods Regulations 1994.*

7. *The practitioner failed to maintain adequate medical records in relation to his treatment of Patients A, B and C.*

7.2 Particular 5 was not pressed in respect of Patient C.

7.3 Patient C was a friend of Patient A. She was treated informally at her home. The practitioner stated that he treated her for migraine headaches. No record was made of her treatment during the period referred to in the particulars of the Complaint.

7.4 As regards the quantities prescribed, the copies of prescriptions in evidence indicated that the practitioner prescribed 25 x 100 mg ampoules of pethidine for Patient C in the period from 12 April 2001 to 9 May 2001.

7.5 The practitioner conceded that:

- (a) the amount prescribed was in excess of a reasonable standard<sup>13</sup>; and
- (b) the amount prescribed could cause addiction<sup>14</sup>.

## **8. Complaint concerning Patient D**

8.1 Particulars of the Complaint which concerned Patient D were as follows:

8. *During the period January 2001 to July 2001 the practitioner issued prescriptions for drugs of addiction, namely Morphine Sulphate and Morphine Hydrochloride, on the dates and in the quantities shown in the schedule annexed hereto and marked with the letter "D" without obtaining an authority in respect of Patient D from the New South Wales Department of Health under Section 29 of the Poisons & Therapeutic Goods Act 1966 in circumstances where the practitioner had formed the opinion that Patient D was at the time a drug dependent person within the meaning of Section 27 of the Poisons & Therapeutic Goods Act 1966 or, in the exercise of responsible medical judgment, the practitioner should have formed the opinion that Patient D was a drug dependent person, contrary to the requirements of Section 28(b) of the Poisons and Therapeutic Goods Act 1966.*

8.2 Patient D consulted the practitioner at the 7 Days and Nights Surgery in January and February 2001 and at the Healthpoint Medical Centre from 26 February 2001.

8.3 The medical records of the 7 Days and Nights Surgery contained a note dated 30 April 1999 to the effect that Patient D's request for morphine had been

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refused. In response she had stated that she would report the medical practice to the Medical Board. The note questioned whether she was a drug seeker.

The medical records of the Healthpoint Medical Centre contained a note dated 28 May 1999 to the effect that Patient D's insistence upon a morphine injection had been refused.

- 8.4 A note made by the practitioner at the time of initial consultation on 30 January 2001 indicated that he had considered and determined that Patient D was not a *doctor shopper*. Morphine was prescribed on that date and on 1, 7, 11 and 26 February 2001. On 11 February 2001 the practitioner recorded advice to Patient D to the following effect:

*Pt is using easy availability. I reassured her that any further frequent use of morphine will result in termination of my care.*

The practitioner agreed<sup>15</sup> that by 11 February 2001 it was clear that Patient D was addicted to opiates.

- 8.5 On 20 February 2001 another practitioner at the Healthpoint Medical Centre declined Patient D's request for morphine. On 26 February 2001 the practitioner declined a similar request.
- 8.6 Between March 2001 and July 2001 the practitioner issued numerous prescriptions for morphine to Patient D. No authority was obtained as required by the *Poisons & Therapeutic Goods Act 1966*, the practitioner denying that he was aware of the requirement to do so.
- 8.7 On 10 May 2001 Mr Battye of the Pharmaceutical Services Branch contacted the practitioner and instructed him that further narcotics were not to be provided to Patient D because another doctor held an authority to deal with her

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15 Transcript 195

in respect of these drugs and *because he or Dr Balin did not hold/or have applied for authority*<sup>16</sup>. The practitioner disregarded this instruction and prescribed morphine for Patient D on 16 further occasions. He did so, he said, on the basis of advice from Dr Balin, a principal in the Healthpoint Medical Centre experienced in the treatment of drug addiction, to the effect that Patient D was not on a methadone program and was obtaining Schedule 8 drugs only from the Healthpoint Medical Centre.

The practitioner continues to practice with Dr Balin at the Healthpoint Medical Centre. Dr Balin was not called to give evidence.

- 8.8 No further contact was made with the Pharmaceutical Services Branch or Mr Battye concerning the ongoing treatment of Patient D nor was any authority sought to prescribe *Schedule 8* drugs to her.

## **9. Complaint concerning Patient E**

- 9.1 Particulars of the Complaint which concerned Patient E were as follows:

9. *During the period December 2000 to July 2001 the practitioner issued prescriptions for drugs of addiction and restricted substances on the dates and in the quantities for the patients shown in the schedule annexed hereto and marked with the letter "E" without exercising responsible medical judgment.*

- 9.2 The medical record in respect of Patient E indicated that she consulted the practitioner on 11 February 2001 complaining of anxiety and panic and leg pains. A prescription was issued for Panadeine Forte and temazepan.

- 9.3 Immediately preceding this medical record is a note reading *5 days off H*. The practitioner denied that he recognised the letter 'H' as a short form for heroin.

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16 Exhibit G

Immediately following the practitioner's record of treatment of Patient E is a note reading *ex heroin addict*.

## **10. Complaint concerning Patient F**

10.1 Particulars of the Complaint which concerned Patient F were as follows:

9. *During the period December 2000 to July 2001 the practitioner issued prescriptions for drugs of addiction and restricted substances on the dates and in the quantities for the patients shown in the schedule annexed hereto and marked with the letter "E" without exercising responsible medical judgment.*

10.2 Patient F consulted the practitioner on 5 April 2001 complaining of long term neck pain. She had been a patient of the Healthpoint Medical Centre for some time prior to this date and had not previously been prescribed benzodiazepines. The practitioner prescribed Flunitrazepam in a dosage equal to 2 – 4 mg at night.

## **11. Complaint concerning Patient G**

11.1 Particulars of the Complaint which concerned Patient G were as follows:

9. *During the period December 2000 to July 2001 the practitioner issued prescriptions for drugs of addiction and restricted substances on the dates and in the quantities for the patients shown in the schedule annexed hereto and marked with the letter "E" without exercising responsible medical judgment.*

11.2 Patient G consulted the practitioner on one occasion only on 15 March 2001 complaining of back pain over an 11 year period and stating that when the pain was particularly acute she used Physeptone tablets. The practitioner prescribed Physeptone and Serepax.

11.3 It was also argued for the Complainant that Patient E's request for Physeptone by name ought to have alerted the practitioner to the prospect that the patient was currently or had in the past been on a methadone program. The Tribunal's attention was also drawn to the practitioner's acceptance<sup>17</sup> of the proposition that benzodiazepines such as Serepax can be used to prolong the effect of a drug such as Physeptone.

11.4 Exhibit H comprised an extract from *MIMS Annual 2000* which stated that the drug was not recommended for use in ambulant patients. The practitioner's evidence of whether he had access to this text at the relevant time was ambiguous. He agreed<sup>18</sup> however that had he consulted the text he would have become aware of this restriction on the use of Physeptone.

## 12. Complaint concerning Patient H

12.1 Particulars of the Complaint which concerned Patient H were as follows:

9. *During the period December 2000 to July 2001 the practitioner issued prescriptions for drugs of addiction and restricted substances on the dates and in the quantities for the patients shown in the schedule annexed hereto and marked with the letter "E" without exercising responsible medical judgment.*

12.2 Patient H consulted the practitioner on 17 December 2000. She was prescribed Valium.

The front cover of her medical record bears the endorsement *Heroin addiction*. On the second page an undated note states *probably Valium dependent*. These notes were made in the handwriting of someone other than the practitioner.

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12.3 The practitioner stated that he had no memory of Patient H or of the prescription issued to her. He also expressed difficulty in making sense of the medical records, suggesting that the records of this and other patients may have been disconnected in the course of the photocopying process.

12.4 Notwithstanding the confusion in the medical records, the copy prescription in evidence<sup>19</sup> indicated that Patient E was in fact prescribed Valium on 17 December 2000.

### 13. Complaint concerning Patient J

13.1 Particulars of the Complaint which concerned Patient J were as follows:

9. *During the period December 2000 to July 2001 the practitioner issued prescriptions for drugs of addiction and restricted substances on the dates and in the quantities for the patients shown in the schedule annexed hereto and marked with the letter "E" without exercising responsible medical judgment.*

13.2 The medical records in respect of Patient J are also confused. The Complainant relied upon a prescription issued to Patient J and dated 5 February 2001. It was stated that the practitioner had issued this prescription following a consultation on the same date when Patient J complained of insomnia, restlessness and anxiety and reported that her children had been removed from her care by the Department of Community Services. However, the record<sup>20</sup> appearing in the evidence could be read as dating this consultation on 24 September 2000 when an identical prescription was issued.

13.3 Patient J's medical record also indicated that she had been prescribed benzodiazepines on four occasions during 1999, on three of which Valium and

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19 Tab 14, p.16

20 Exhibit B, Tab 9, p 74

Serepax had been prescribed in combination. The practitioner accepted<sup>21</sup> that this history indicated that Patient J had developed a tolerance to benzodiazepines that required management but stated that, because he had not subsequently been consulted by her, he had not been provided with the opportunity to implement a plan of management. He also accepted<sup>22</sup> that it was not appropriate to prescribe two benzodiazepines in combination.

#### 14. Complaint concerning Patient K

14.1 Particulars of the Complaint which concerned Patient K were as follows:

9. *During the period December 2000 to July 2001 the practitioner issued prescriptions for drugs of addiction and restricted substances on the dates and in the quantities for the patients shown in the schedule annexed hereto and marked with the letter "E" without exercising responsible medical judgment.*

14.2 Patient K consulted the practitioner on one occasion on 22 May 2001. His clinical note recorded a problem with heroin use and family problems. A prescription for Physeptone was issued and counselling was provided.

14.3 The significance of this prescription is that it was issued at a time when the practitioner was aware that Patient K was an addict<sup>23</sup> and 12 days after the practitioner's conversation with Mr Batty on 10 May 2001 in the course of which he was reminded of the requirements of the *Poisons & Therapeutic Goods Act* 1966 in respect of the prescription of drugs of addiction.

14.4 The practitioner denied that, notwithstanding that conversation, his association with Dr Balin and the information provided to him concerning his statutory obligations in 1995, he was aware that authority was required for a one off prescription for a drug addicted person. His concern, he stated, was to *tide*

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over Patient J until she could be treated by Dr Balin for her addiction. The clinical record indicated that Dr Balin was in fact consulted on 9 June 2001, and that Patient K at that time stated that she and her husband had ceased methadone five weeks before.

- 14.5 The practitioner also claimed inexperience in the treatment of addicts and the prescription of narcotics. He did not adequately explain why, having so recently received advice from Mr Batty, he had not consulted Dr Balin, a practitioner specialising in the field of drug addiction, before proceeding with the supply of this prescription to Patient K.

**15. Complaint concerning Patient L**

- 15.1 The Complaint which concerned Patient L was not pressed.

**16. Complaint concerning Patient M**

- 16.1 Particulars of the Complaint which concerned Patient M were as follows:

9. *During the period December 2000 to July 2001 the practitioner issued prescriptions for drugs of addiction and restricted substances on the dates and in the quantities for the patients shown in the schedule annexed hereto and marked with the letter "E" without exercising responsible medical judgment.*

- 16.2 This particular of the Complaint represents another circumstance in which the medical records are deficient or confused.

- 16.3 A copy prescription<sup>24</sup> dated 17 December 2000 indicated that the practitioner prescribed Serepax for Patient M on this date. There is no medical record concerning the issue of this prescription and it was suggested on behalf of the practitioner that the record attributed to Patient H might in fact relate to Patient M.

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24 Tab 14, p 18

16.4 In any event, the records for Patient M do show that as at 16 June 2000 an unidentified medical practitioner had noted that he or she felt that Patient M was benzodiazepine dependent and should not further be prescribed such drugs unless recommended by a psychiatrist. Notwithstanding this note, Patient M received prescriptions of Serepax on three further occasions by other doctors prior to the prescription issued by the practitioner on 17 December 2000. One such prescription was written two days before, on 15 December 2000.

16.5 In the absence of an identified medical record concerning the occasion when this prescription was issued, the practitioner was unable to offer an explanation for it.

## **17. Complaint concerning Patient N**

17.1 Particulars of the Complaint which concerned Patient N were as follows:

9. *During the period December 2000 to July 2001 the practitioner issued prescriptions for drugs of addiction and restricted substances on the dates and in the quantities for the patients shown in the schedule annexed hereto and marked with the letter "E" without exercising responsible medical judgment.*

17.2 Patient N consulted the practitioner on one occasion on 22 May 2001. The clinical note of this consultation recorded that Patient N had a family problem with narcotic use. A prescription was written for Physeptone and Valium, for a one week trial only. This also represented an occasion on which the combined prescription of Physeptone and Valium was contrary to the recommendations of *MIMS Annual 2000*.

17.3 The practitioner agreed<sup>25</sup> that in his treatment of Patient N he had given in to his request for drugs of addiction. This, again, occurred shortly after the

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telephone conversation with Mr Batty on 10 May 2001 at a time when, as acknowledged by the practitioner, he was aware that Patient N was a drug dependent person.

17.4 The practitioner's explanation, as in the case of Patient K, was one of ignorance of his legal obligations and inexperience in the field of drug addiction.

## **18. Complaint concerning Patient O**

18.1 Particulars of the Complaint which concerned Patient O were as follows:

9. *During the period December 2000 to July 2001 the practitioner issued prescriptions for drugs of addiction and restricted substances on the dates and in the quantities for the patients shown in the schedule annexed hereto and marked with the letter "E" without exercising responsible medical judgment.*

18.2 Patient O consulted the practitioner for the first time on 19 June 2001. He had not consulted a doctor at the Healthpoint Medical Centre since 1996. He requested and was prescribed Physeptone. He was also prescribed Antabuse, a drug reportedly used in connection with abuse of alcohol.

18.3 The significance of this combination of drugs was that it indicated that Patient O was addicted to narcotics and to alcohol. The practitioner stated that he was aware that the use of Physeptone when the patient was an alcoholic was contra-indicated. He stated that Patient O had not been abusing alcohol at the time of the prescription and that Antabuse had been prescribed as a precaution only, in the event that Patient O might tend to revert to alcohol.

18.4 Ultimately the practitioner conceded that he now understood that it was inappropriate to prescribe Physeptone to a patient with a history of alcohol abuse.

18.5 Further, as with Patients K and N, the prescription for Physeptone had been written after the conversation with Mr Battye on 10 May 2001.

## 19. Complaint concerning Patient P

19.1 Particulars of the Complaint which concerned Patient P were as follows:

9. *During the period December 2000 to July 2001 the practitioner issued prescriptions for drugs of addiction and restricted substances on the dates and in the quantities for the patients shown in the schedule annexed hereto and marked with the letter "E" without exercising responsible medical judgment.*

19.2 Patient P consulted the practitioner for the first time on 30 July 2001. He recorded that she informed him that 12 months prior to that date she had been involved in a house fire when she had lost a son and burned her left foot. He prescribed Oxycontin at her request for the continued pain resulting from the burns to her left foot.

19.3 The practitioner conceded<sup>26</sup> that he had not inquired concerning Patient P's history of drug use at the time of issuing this prescription and agreed that it was likely that, if severe pain had been experienced over a period of 12 months, there would have been a history of use of analgesia.

19.4 The practitioner denied that at the time of writing this prescription he had been aware of abuse of the drug Oxycontin by persons addicted to opiates.

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26 Transcript 244

## 20. PEER REVIEW

20.1 Peer review was undertaken at the request of the Complainant by Dr Sophie Bernard and Dr Raymond Seidler.

20.2 In her initial report<sup>27</sup>, Dr Bernard was severely critical of the following conduct of the practitioner:

- (1) In respect of his prescribing pethidine for Patients A, B and C:
  - (a) his prescription of drugs of addiction to family members, except in one off situations where no other treating doctor was available, with particular criticism of the management of Patient A by the repeated prescription of large quantities of narcotics;
  - (b) the absence of clinical records in respect of his prescribing for Patients A, B and C; and
  - (c) his use of false patient addresses.
- (2) In respect of Patient D because of his continuing to prescribe drugs of addiction following contact by Mr Battye.
- (3) In respect of his claimed ignorance of the requirement for authority to prescribe drugs of addiction to drug dependent patients and of restrictions on the prescription of benzodiazepines notwithstanding previous counselling by the Pharmaceutical Services Branch. On this aspect Dr Bernard stated:

*I am very surprised that Dr Devsam would claim to be unaware of these restrictions, in the face of previous counselling.*

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<sup>27</sup> Exhibit B, Tab 13

20.3 In her initial report Dr Bernard expressed moderate to mild levels of criticism in respect of the practitioner's treatment of Patients J, M, H, N, O, and G. No criticism was offered in respect of Patients E, K, P and F.

She also expressed moderate criticism of his overall pattern of narcotic prescription.

20.4 Dr Bernard reported<sup>28</sup> further on 22 July 2004. By this date she had received from the practitioner's solicitor a copy of the report of Dr Seidler and she had discussed her initial report with an officer of the Complainant. She expressly disavowed any influence by the Complainant's officer in the firming of views which she relayed in this second report. In many cases, the level of criticism was said to have been influenced by the consideration that the practitioner had previously received counselling in respect of the prescription of drugs of addiction.

Her levels of criticism in this report varied as follows:

- (1) In respect of Patients E, M, H, G from moderate to severe.
- (2) In respect of Patient J to moderate.
- (3) In respect of Patients K, N, and O to severe.
- (4) In respect of Patient F to mild.

20.5 Dr Seidler reported<sup>29</sup> to the Complainant on 13 April 2004. His levels of criticism were as follows:

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28 Exhibit B, Tab 13

29 Exhibit B, Tab 15

- (1) Patient A: by reason of his relationship to her, the prescription of pethidine in circumstances where he was aware of her dependency upon the drug, his failure to keep contemporaneous records of his prescriptions, and his failure to obtain authority to continue to prescribe: severe.
- (2) Patient B: by reason of his relationship to her, the failure to keep contemporaneous records of prescription and other clinical information: severe.
- (3) Patient C: by reason of his relationship to her and his failure to keep any prescribing records for her: severe.
- (4) In respect of Patients A and B: the prescription and administration of excessive quantities of pethidine to Patients A and B to whom he was related and in circumstances where he knew or should have known that one or both were dependent upon injectable pethidine: severe.
- (5) In respect of Patients B and C: the issuing of prescriptions for pethidine in their names knowing that the drug was to be used by Patient A: severe.
- (6) In respect of Patients A, B and C: failure to keep complete records of prescription and treatment in circumstances of the prescription of drugs of addiction: severe.
- (7) Patient D: the prescription of large quantities of morphine, benzodiazepines, and Panadeine Forte in amounts above recommended therapeutic standards for lengthy periods of time, without authority and without therapeutic rationale: severe.
- (8) Patient E: the prescription of benzodiazepine and Panadeine Forte without reference to his obligation to inquire into the question of

whether she was a drug seeker, compounded by the absence of clinical record: severe.

- (9) Patient F: the prescription of Flunitrazepam at a dosage level double the maximum approved, and in circumstances where inappropriate to treat the symptoms complained of: severe.
- (10) Patient G: the prescription of Physeptone tablets in circumstances where the patient was on a methadone program in Queensland with a resulting high risk that the patient might overdose: severe.
- (11) Patient H: the prescription of benzodiazepines in circumstances where the same drug had been prescribed by six different doctors in the previous year, leading to the conclusion that the patient was a drug seeking individual: severe.
- (12) Patient J: the prescription of benzodiazepines in circumstances where the practitioner knew or ought to have known that the patient was on a methadone program: severe.
- (13) Patient K: the prescription of Physeptone without inquiry as to the patient's drug dependency history and without authority: severe.
- (14) Patient L: not pressed.
- (15) Patient M: the prescription of a variety of benzodiazepines when it was apparent from the clinical notes that the practitioner was aware of the patient's dependency on the drug: severe.
- (16) Patient N: the prescription in combination of Physeptone and Diazepam, said by Dr Seidler to be a *lethal prescription, especially for drug seeking patients*: severe.

- (17) Patient O: the prescription of Physeptone tablets in inappropriate circumstances: severe.
- (18) Patient P: the prescription of Oxycontin, a drug widely abused and trafficked by opioid dependent patients in circumstances where the practitioner knew or ought to have known that Patient P was a drug seeker and was opioid dependent: severe.

20.6 Dr Seidler also expressed grave concern at:

- (1) the ease with which patients were able to secure benzodiazepines and opioids from the practitioner;
- (2) the propensity of the practitioner to fail in issuing prescriptions to print quantities in words or to handwrite quantities in figures, particularly having regard to the history of his having been informed of the regulations relating to *Schedule 8* drugs;
- (3) the use of false patient addresses and false prescribing addresses on prescriptions for Patients A and B;
- (4) the prescription of drugs of addiction to 6 apparently drug dependent persons without authority, again having regard to the history of his having been informed of legal requirements in this respect;
- (5) the practitioner's claim to have been unaware of these legal requirements, notwithstanding the evidence of prior counselling by the Department of Health;

- (6) the practitioner's failure, as an alternative to prescribing drugs of addiction, to refer the patients to persons experienced in the treatment of their dependencies; and
- (7) the practitioner's apparent absence of appreciation of the risks to the *vulnerable groups of individuals* in continuing his inappropriate prescribing practices.

20.7 Both peer reviewers were cross examined on their reports.

It was apparent from cross examination that they had drawn from some of the clinical notes inferences that were not supported by evidence before the Tribunal and that some aspects of their opinions had been based upon speculation on their part.

20.8 Dr Bernard rejected the suggestion put to her that she had been influenced to increase her level of criticism of the practitioner by reading Dr Seidler's report. She also denied any influence by the Complainant's lawyers but stated that she had undertaken with them a patient by patient review of her initial report. She stated that prior to her meeting with the Complainant's lawyers she had been less than comfortable with her initial report. After the meeting she had prepared her second report in which she expressed increased levels of criticism.

20.9 Dr Seidler is a general practitioner who has specialist qualifications in the treatment of addictions.

He gave evidence that pethidine is used for relief of acute and unremitting pain, although it has lost favour in some quarters because of its high addiction potential.

20.10 Dr Seidler confirmed the evidence of Dr Bernard that Physeptone contains the drug methadone in tablet form. Dr Bernard was critical of its prescription to a patient who was not on a methadone program and who could sell the drug in its tablet form to others. Methadone in its liquid form, she said, was handed out through a system which did not allow it to be taken away.

Dr Seidler stated that most commonly it is used to prescribe medication for persons who are participating in a methadone program who intend to travel and therefore are unable to access methadone in liquid form from a normal outlet. Alternatively, he said, it is used in palliative care for terminally ill patients.

According to Dr Seidler, a patient who asks for Physeptone by name must automatically be assumed to be a drug seeking patient who should be referred to a program in order to have access to methadone or Physeptone in a controlled environment.

20.11 He described the drug Oxycontin as *Hill Billy heroin* and said it was widely sought by addicts because of its euphoric and mind altering effects when injected.

Both Dr Bernard and Dr Seidler recognised the letter *H* as a short form and street name for heroin.

20.12 Dr Seidler produced a number of publications<sup>30</sup> as examples of materials and information available to general practitioners relating to addiction and drug seeking patients. In addition he answered a number of questions put to him by Tribunal Member, Dr Ilbery, concerning the avenues available to the practitioner at the time of his medical training and subsequently to inform himself concerning drugs of addiction, drug seeking practices and appropriate methods of treatment of drug seeking patients.

20.13 Dr Bernard and Dr Seidler were also challenged on the basis that opinions were expressed in evidence in chief that were more critical of the practitioner than those set out in their reports.

In particular in respect of:

- (a) Patient A: Dr Seidler stated that the removal of a ganglion should not have warranted the use of pethidine and that it was apparent that by January 2001 she was addicted to pethidine and had developed a high tolerance to it. He stated that by this date she was using quantities of the drug which were far in excess of therapeutic standards.
- (b) Patient J: Dr Seidler stated that the prescription of Valium and Murelax in combination was unusual and presented a strong potential for the development of dependency. He pointed to the clinical notes which recorded that this patient had been receiving prescriptions through the Healthpoint Medical Centre for Valium and Serepax as an indication that dependency already existed. He accepted that he had made no reference in his report to the need to ascertain why the Department of Community Services had taken two of the patient's children.

Dr Bernard agreed that nothing in the clinical records indicated that Patient J was drug dependent.

- (c) Patient O: Dr Seidler stated that in 26 years of medical practice he had never before become aware of the co-prescription of Physeptone and Antabuse. The prescription of Antabuse, he said, suggested a level of dependence upon alcohol. He said it was commonly known to general practitioners that a person, disinhibited through the influence of alcohol is more likely to overdose and thus that co-prescription of these drugs presented a danger to the patient.

- (d) Patient D: Dr Seidler said the prescription of substantial quantities of Ordine, which he said is a morphine mixture used to provide relief for chronic, severe, malignant and terminal pain, indicated either that this patient was in the final stages of a terminal disease or seriously and highly dependent on the drug to the point where she had developed a high level of tolerance. Most general practitioners, he said, would have been aware of this.
- (e) Patient L: Dr Seidler agreed that he had made an error in identification of this patient.
- (f) Patient E: Dr Seidler maintained that the practitioner should have been alerted to the possibility of drug dependence by the reference to *H* in the notes and that in such circumstances it was inappropriate to prescribe benzodiazepines. He suggested that it would have been more appropriate to have taken a full medical history, checked for physical signs of dependence such as track marks on the patient's arm and then to have treated her by referring her to a rehabilitation provider.

Dr Bernard stated that the practitioner should have worked out that this patient was heroin dependent, agreeing that her criticism was partly based on a picture of the practitioner's pattern of prescription.

- (g) Patient F: Dr Seidler said the prescription of Flunitrazepam at a time when the medical records indicated that the patient had in the past received morphine was inappropriate because Flunitrazepam is a drug commonly sought by drug dependent persons as a means of prolonging the effects of heroin. He agreed that the medical records did not indicate that the patient at the time of prescription of Flunitrazepam was taking any morphine based medication. However, Dr Seidler

maintained that Flunitrazepam was inappropriate for the treatment of the complaint of back and neck pain.

Dr Bernard agreed that there was no evidence to establish that this patient was a doctor shopper and that whilst she had initially been prescribed strong medication, a less potent drug was subsequently prescribed.

- (h) Patient G: Dr Seidler said that normal people do not ask for Physeptone for back pain and that no general practitioner that he had known would prescribe Physeptone for this complaint.
- (i) Patient N: Dr Seidler said that the prescription of Physeptone in combination with Valium in the quantities dispensed constituted a lethal dose which was particularly dangerous to an addict. He agreed that it was not possible to know whether the patient had altered the prescription although the records of the Pharmaceutical Services Branch had suggested that this might have occurred with respect to the quantities dispensed.
- (j) Patient P: Dr Seidler stated that the practitioner should have worked out that this patient was addicted, notwithstanding that the note that she was a doctor shopper had been added to the clinical notes in September 2001, two months after the prescription had been written by the practitioner.
- (k) Patient K: Dr Seidler said the Physeptone prescribed had been sufficient to cause her death and should not have been prescribed before the patient was referred to Dr Balin. The prescription, he said, should not have been written at all because the practitioner was aware that she was an addict.

20.14 In general, the thrust of the cross examination of Drs Bernard and Seidler was to suggest that they had made assumptions as to what the practitioner ought to have recognised in respect of the specified patients had he undertaken inquiries of the then available Hotline, taken full medical histories, undertaken physical examinations, in particular of the patients' arms, and of their presentations generally.

Dr Seidler commented that the medical records of the general practitioners operating at the Healthpoint Medical Centre, including the practitioner, demonstrated an absence of rigour in the taking of medical histories.

He suggested the profile of the patients under consideration, which included Patients A, B, C and D, was one of drug seeking individuals.

## **21. FINDINGS**

### **21.1 Patient A:**

The evidence established that the practitioner was fully aware of Patient A's dependence upon pethidine shortly after he first prescribed it for her and at the very latest by the end of 2000. He continued to prescribe the drug for her in considerable quantities for many months, even after he had been contacted by Mr Battye in May 2001 and reminded of his statutory obligations. Ongoing prescription was particularly inappropriate having regard to the practitioner's relationship with Patient A. Medical records in relation to prescriptions of pethidine and treatment during the period August 2000 to July 2001 were non-existent.

The evidence of the practitioner and Patient A concerning his inability to withstand the pressure which Patient A placed upon him in her demands for pethidine further demonstrated the inappropriateness of his continuing to treat her in circumstances where she developed an addiction to the drug.

Particulars 1, 3, 6 and 7 of the Complaint in so far as they related to Patient A are proved.

## 21.2 Patient B

The practitioner was unable to provide therapeutic justification for the prescription of substantial quantities of pethidine to Patient B. The evidence has persuaded the Tribunal that its prescription did not represent responsible medical judgment. Again, there is evidence that the practitioner was unable to withstand the pressure placed upon him by Patients A and B in respect of the treatment of Patient B, making his continued treatment of her inappropriate.

There were no medical records of prescriptions of pethidine to or of treatment of Patient B.

Particulars 2, 3, 6 and 7 are proved in respect of Patient B.

In relation to Particular 5, there is no doubt that the evidence established that prescriptions were issued in respect of Patient B nominating false addresses and in so doing the practitioner issued them in contravention of the *Drug Misuse and Trafficking Act 1985* and the *Poisons Act 1966*. However, the Particular also required proof that the prescriptions were issued in the names of persons for whom the drug was not intended. Although the practitioner conceded that Patient A received some of the pethidine that had been dispensed pursuant to prescriptions written for Patient B, he denied the prescriptions were issued with that purpose in mind.

In the circumstances, Particular 5 is not proved.

### 21.3 Patient C

The practitioner was unable to provide therapeutic justification for the prescription of substantial quantities of pethidine to Patient C. The evidence has persuaded the Tribunal that its prescription did not represent responsible medical judgment.

There were no medical records of prescriptions of pethidine to or of treatment of Patient C at relevant times.

Particulars 4, 6 and 7 have been proved in respect of Patient C.

Particular 5 was not pressed in respect of Patient C.

### 21.4 Patient D

The practitioner conceded that by 11 February 2001 he was aware that Patient D was a drug dependent person. Notwithstanding this knowledge, he continued to prescribe drugs of dependence in contravention of his legal obligations, continuing to do so even after the telephone conversation with Mr Battye in May 2001.

Particular 8 of the Complaint is proved.

21.5 Particular 9 required proof of the issue to Patients E to O of prescriptions for drugs of addiction in circumstances indicating an absence of *responsible medical judgment*.

**Patient E:** having regard to the evidence of the peer reviewers, the Tribunal does not accept the practitioner's evidence that he did not recognise the reference to *H* as a reference to heroin. In those circumstances the Tribunal

finds the prescription to this patient of Panadeine Forte and Temazepan demonstrated an absence of responsible medical judgment.

Particular 9 in respect of Patient E is proved.

**Patient F:** whilst a measure of criticism appears to be warranted, having regard to the patient's prior medical history, absence of responsible medical judgment has not been established.

Particular 9 in respect of Patient F is not proved.

**Patient G:** the evidence of the peer reviewers established that Patient G's request for Physeptone by name should have alerted the practitioner to the need to inquire further concerning the patient's background with drugs of addiction. The prescription of Physeptone with Serepax is found to demonstrate an absence of responsible medical judgment.

Particular 9 in respect of Patient G is proved.

**Patient H:** the practitioner was unable to explain this prescription. The confusion concerning the medical records said to relate to Patient H, however, leads to the conclusion that Particular 9 in respect of Patient H is not proved.

**Patient J:** Both Dr Bernard and Dr Seidler speculated concerning the reasons for the removal of this patient's children by the Department of Community Services. Speculation such as this may not be taken into account by the Tribunal.

However, the evidence was that Patient J's medical history indicated a tolerance to benzodiazepines at the time of the prescription of February 2001

such that prescribing two benzodiazepines in combination demonstrated an absence of responsible medical judgment.

Particular 9 in respect of Patient J is proved.

**Patient K:** the prescription of Physeptone to Patient K in the knowledge that she was a drug dependent person contrary to statutory requirements and after the telephone conversation with Mr Battye demonstrated an absence of responsible medical judgment.

Particular 9 in respect of Patient K is proved.

**Patient L:** Complaint withdrawn.

**Patient M:** notwithstanding the confusion in the medical records concerning Patient M, there was evidence that, at the time of the prescription of Serepax for this patient in December 2000, the clinical notes recorded that she was dependent upon benzodiazepines. This note, coupled with the evidence of the regularity with which Patient M received further prescriptions from other practitioners within the Healthpoint Medical Centre, pointed to continued dependence. In the circumstances, the prescription of Serepax on 17 December 2000 represented an absence of responsible medical judgment.

Particular 9 in respect of Patient M is proved.

**Patient N:** the practitioner agreed that he had given in to Patient N's request for drugs of addiction. The evidence concerning the inappropriateness of the combined prescription of Physeptone and Valium, and that relating to the issue of the prescription of these drugs after the telephone conversation with Mr Battye, leads inevitably to the conclusion that responsible medical judgment was absent on this occasion.

Particular 9 in respect of Patient N is proved.

**Patient O:** the evidence concerning the inappropriateness of the combined prescription of Physeptone and Antabuse, and that relating to the issue of the prescription of these drugs after the telephone conversation with Mr Battye, leads inevitably to the conclusion that responsible medical judgment was absent on this occasion.

Particular 9 in respect of Patient O is proved.

**Patient P:** the issue of one prescription to Patient P of a drug of addiction in response to a specific request, having regard to the record of serious burns, is insufficient in the Tribunal's opinion to warrant a finding that an absence of responsible medical judgment was demonstrated. Again, speculation concerning the circumstances of the fire in which the burns were suffered must be disregarded.

Particular 9 in respect of Patient P is not proved.

- 21.6 The result of these findings is that the Complaint concerning the absence of responsible medical judgment has been proved in respect of Patients A, B, C, D, E, G, J, K, M, N and O has been proved.

The Complaint in so far as it relates to Patients A, B, C and D involves conduct of significant reprehensibility. In respect of Patients A, D, K, N and O, the evidence was indicative of defiance of the practitioner's statutory obligations of which he was reminded by Mr Battye in May 2001.

In the circumstances, the Tribunal is comfortably satisfied that the Complaint established that the practitioner is guilty of both unsatisfactory professional conduct and professional misconduct in respect of Patients A, B, C, D, K, N and O.

The Tribunal finds the practitioner guilty of unsatisfactory professional conduct in respect of Patients E, G, J and M.

The Complaint concerning Patients F, H and P is not proved.

The Tribunal notes that the Complaint concerning Patient L has been withdrawn.

## **22. PENALTY**

22.1 The Tribunal is charged with exercising powers to sanction members of the medical profession for the purpose of protecting the community. The principal consideration in the exercise of these powers is the maintenance of the standards of the medical profession and maintaining the confidence of the public in the profession. The public is entitled to the assurance that measures will be taken to address breaches of acceptable standards of practice.

22.2 By any standard, the practitioner's conduct must be regarded as unacceptable.

22.3 For the Complainant it was argued that the conduct demonstrated flaws in the practitioner's character such that deregistration was warranted, the following points being made:

- (1) In relation to Patient A, the practitioner had treated her in a fashion that created her dependence on pethidine and then had been unable to withstand pressure, continuing to prescribe and failing to refer her to treatment that would have dealt with that dependence.
- (2) The practitioner engaged in conduct in using false addresses that was intended to deceive pharmacies in New South Wales and Queensland.

- (3) In respect of false addresses, the practitioner continued to maintain this deception before the Tribunal until such time as it could no longer be denied.
- (4) Treatment of a number of patients, in particular Patient A, placed their health at risk.
- (5) The practitioner's claimed ignorance of the requirements of the law concerning the authorities required for the prescription of drugs of addiction was not credible.
- (6) Assuming in his favour, that he was in fact ignorant of those requirements, he made no attempt after contact from Mr Battye to check the requirements of the law, failing even to discuss the obligations which the law placed upon him with Dr Balin, said to be an expert in treating drug addiction.
- (7) In those circumstances, the continued prescription of drugs of addiction contrary to the requirements of the law represented deliberate defiance.
- (8) The practitioner has failed to disclose the conditions imposed on his right of practice and the proceedings before the Tribunal to Bond University where he has applied for a teaching position or to the College of General Practitioners, for which he undertakes the role of examiner.

22.4 In response it was argued for the practitioner that he should be permitted to remain in practice upon the conditions currently which deny him the right to prescribe *Schedule 8* and *Schedule 4* drugs. It was said that the Tribunal could be satisfied that this would meet the requirements for protection of the public for the following reasons:

- (1) There was evidence of the practitioner to the effect that since the circumstances leading to the Complaint had come to light, he had undertaken further education to address his lack of practical experience in the treatment of drug dependent persons. In addition, he had enrolled in a course of hypnotherapy which will provide him with alternative methods of managing patients suffering from chronic pain.
- (2) He had continued in practice at the Healthpoint Medical Centre referring to other medical practitioners within the Centre patients who required drugs in respect of which his prescribing authority had been withdrawn.
- (3) The stresses previously experienced by the practitioner in respect of his personal life had been resolved.
- (4) He had been able to manage stress without Epilim using as alternatives regular consultation with Dr Whittington, meditation and relaxation tapes.
- (5) The practitioner's conduct had been *well meaning* rather than a malevolent disregard for the requirements of the law. There is no evidence that the conduct was pursued on a grand scale or with intent to provide pecuniary benefit to the practitioner.
- (6) The practitioner intended to await the outcome of the Tribunal proceedings before disclosing to Bond University or the College of General Practitioners the terms of any conditions imposed upon his continued right of practice.

22.5 The Tribunal was urged by counsel for the practitioner to disregard all of the evidence of both peer reviewers. This suggestion has not been adopted, although not all of the evidence has been accepted. Some instances where the

evidence has been disregarded have been referred to in the body of these Reasons.

22.6 The penalty to be imposed therefore comes down to the assessment of the obvious defects in the practitioner's character and the misconduct leading to the Complaint as against the evidence that in the three years during which the practitioner's prescribing rights have been curtailed he has continued to practise without further misconduct and has managed appropriately the constraints imposed upon his right of practice.

22.7 The Tribunal has determined that in all of the circumstances, deregistration or suspension are not warranted.

### **23. DETERMINATION**

23.1 The practitioner is severely reprimanded.

23.2 The practitioner is fined the sum of \$10,000.

23.3 In accordance with the statement of intent made by the practitioner to the Tribunal, the practitioner is to provide to the Royal Australian College of General Practitioners and Bond University copies of the Particulars of the Complaint brought against him by the Commission, and of the Tribunal's findings.

The practitioner is to provide to the Royal Australian College of General Practitioners and Bond University a copy, certified by the Registrar of the New South Wales Medical Board, of the conditions imposed upon his registration as a medical practitioner in New South Wales.

This order to be complied with by no later than 28 days after the date of publication of these Reasons.

23.4 The practitioner is to comply with the following conditions imposed upon his registration as a medical practitioner:

- (1) Dr Devsam is not to seek the return of a Schedule 8 drug authority without the consent of the New South Wales Medical Board (“the Board”).
- (2) Dr Devsam is not to seek the return of the Schedule 4 Appendix D drug authority without the consent of the Board.
- (3) Dr Devsam is to work only in a practice with at least one other registered medical practitioner always working on site.
  - (i) Dr Devsam is to inform any practitioner who is working on site while Dr Devsam is working of his conditions 1, 2, 3 and 6.
  - (ii) Dr Devsam is to forward to the Board within seven days of commencing employment a copy of conditions 1, 2, 3 and 6 signed by the aforementioned practitioner(s).
  - (iii) Dr Devsam authorises the practitioner(s) above to immediately notify the Board of any concern with Dr Devsam’s compliance with these conditions or his clinical performance.
- (4) Dr Devsam is to undertake relevant CME activities through the Royal Australian College of General Practitioners (‘RACGP’) Quality Assurance & Continuing Professional Development (‘QA & CPD’) Program with such CME to consist of 100 points per 12 month period. These activities must include, but not be limited to courses concerning prescription of drugs and drug abuse.
- (5) Dr Devsam is to provide the Board at three monthly intervals a copy of his QA & CPD Credit Point Statement issued by the RACGP and, at the

same time, he is to provide the Board with an outline of the programs he intends to undertake for the next three month period.

- (6) Dr Devsam is not to prescribe for self-medication or for the medication of family members Schedule 4 Appendix D or Schedule 8 drugs.
- (7) These conditions may be varied at the discretion of the Board.

23.5 The practitioner is to pay the Commission's costs of the proceedings before the Tribunal. This order is suspended for 7 days to allow the practitioner to list the matter before the Tribunal for a further argument on the issue of costs should he wish to do so.

23.6 The Tribunal recommends that condition 9 imposed on the practitioner's registration as a Medical Practitioner in New South Wales by the New South Wales Medical Board as set out in paragraph 3.6 of these Reasons be varied to read as follows:

To attend for random urine drug screening in accordance with the Board's protocol (a copy of which is included in the Participant's Handbook). Results of the Urine Drug Screening to be forwarded to the Board nominated and treating practitioners and to the Board. Urine Drug Screening is to be at the practitioner's expense.

23.7 The exhibits may be released.

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Deputy Chairperson Judge M Sidis

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Member Dr K Ilbery

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Member Ms J Houen

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Member Dr N Harris