

## **MEDICAL TRIBUNAL OF NEW SOUTH WALES**

DEPUTY CHAIRPERSON: JUDGE J B SINCLAIR QC

MEMBERS: DR S MESSNER

DR K ILBERY

MR D BERRY

3 JULY 1998

### **RE: AN APPLICATION FOR REINSTATEMENT - Mr WADIE HADDAD**

#### **REASONS FOR DETERMINATION**

This Tribunal is charged with determining the Applicant's suitability for reinstatement to the Register of Medical Practitioners of New South Wales as a General Practitioner following his removal from the register in October 1994.

The proceedings are in the nature of a review as set out in S92 of the Medical Practice Act, 1992 and discussed in the recent judgment of the Court of Appeal in *Zaidi v. Health Care Complaints Commission* (17 July 1998).

A short history of this matter is as follows.

The applicant graduated in medicine at the University of New South Wales in 1975 with a Bachelor of Medicine and a Bachelor of Surgery degrees. He became a Fellow

of the Royal Australian College of General Practitioners. Between 1991 and 1994 he was a part time lecturer in general practice at the University of Sydney.

From August 1978 to October 1994 he practised alone as a GP at Campbelltown and also worked at various hospitals; St Vincent's Hospital in Sydney, Campbelltown, Camden and Liverpool Hospitals.

In 1969 the applicant suffered an acute psychotic reaction, when a final year medical student, for which he continued to take 75 mg of Melleril daily and was seen periodically by Professor Gordon Parker until 1987, during which period he suffered no further episodes.

The applicant developed a substantial practice and was highly regarded by his patients and other medical practitioners in the area. The quality of his professional skills at the relevant times is qualified by the common adverse consequences arising from being a sole practitioner, practising in isolation, and having a large number of patients dependent upon him.

On 25 August 1989 he attended to a patient he had not treated before, a young man in his 20's of Samoan origin with whom there was a considerable communication difficulty; the patient's ability to speak English was minimal. The same day the patient attended the police with an interpreter and alleged that in the course of purporting to carry out a physical examination the applicant had indecently assaulted him by

manipulating his penis and testicles, hugging and kissing him and soliciting the complainant to engage in

oral sex. The applicant was charged with indecent assault and came before a Judge and Jury of the District Court at Campbelltown in November 1992 where he was found guilty of the offence. When the matter came on for sentence on 12 February 1993 the trial Judge found that the applicant was an extremely kind and competent doctor who had provided to the community in that area exceptional services for many years. His Honour said, "the evidence before me shows a doctor whose care and concern for his patients has earned him not only gratitude and respect but also a high degree of affection and support". Accordingly the trial Judge was satisfied that it was a proper case to apply the

provisions of S556a of the Crimes Act and without proceeding to conviction his Honour dismissed the charge against the offender.

The applicant continued his practice from the time of being charged until the trial and thereafter until his conduct came before a Medical Tribunal in respect of a Complaint brought by the Complaints Unit that on 25 August 1989 he had solicited a male person into his consulting rooms for an improper purpose and had engaged in improper or inappropriate conduct with him, in particular that he had-

- a) indecently assaulted the patient by manipulating his penis and testicles,
- b) hugged and kissed the patient, and
- c) solicited the patient to engage in oral sex.

It is most regrettable that the Applicant decided not to attend the hearing before the Medical Tribunal, principally on the grounds that he felt he was unable to undergo the

stress of a further hearing. On the basis of the evidence of the complainant, the record of interview and the evidence given by the applicant at the trial, the Tribunal was firmly of the opinion that the explanation advanced by the applicant for his alleged conduct was completely fallacious. The tribunal had no doubt that the applicant had inveigled the patient into his surgery for the purpose of engaging in homosexual conduct with him. The Tribunal noted that there was no evidence of contrition shown by the applicant or admission of his wrongdoing nor any suggestion he was under great stress at the time, nor that such conduct was foreign to his character although, apart from that one incident, he bore a good character. There is no doubt that the failure of the applicant, as the respondent in the proceedings before the Medical Tribunal, to give evidence was a significant omission on his part in respect of a hearing before a Professional Tribunal.

Before this Tribunal the applicant sought to prove the same exculpatory version of the episode. The substance of the evidence of the applicant in respect of his conduct on 25 August 1989 is that he did not indecently assault the patient, that he conducted a thorough physical examination of him, though he was unable to obtain any coherent account of the patient's complaints and at in the course of such physical examination, nearing the end of it, thinking that the patient may have some low back complaint, he performed a neurological reflex test known as a "bulbo-cavernosus test" which involved him stroking the underside of the penis, which was then erect, or pinching the penis, so as to ascertain whether the appropriate reflex was obtained from the lower sacral nerves. He admits that he brought the patient into his surgery through the back door, kissed him on both cheeks and failed to make any record of the consultation.

Before us the applicant in his evidence, asserts that he was under extreme stress, having recently moved his house and surgery, leaving his practice in a disorganised state. Upon reflection, at this time, having read all the transcripts and statements from the previous proceedings and conceding such a test was totally inappropriate, the applicant says he now realises he was not thinking clearly at the time and his mind may have been influenced by reading a French medical text not long before the event about such a test. Against this it must be considered that, in relation to his examination of the patient, the doctor kept no records whatsoever, and the idea of being under extreme stress at the time is something that has come to his mind, maybe innocently, as the years progressed and he has reconstructed the incident to avoid criticism or liability for his misconduct. We take into account that the doctor admits he did probably kiss the patient on both cheeks. He says this was in accordance with both Egyptian and Samoan custom and although he had seen in this country since he migrated here when he was 17 years of age, it is something one might do where you especially knew somebody. The fact is he didn't specially know the patient, he had never been a patient before and at the highest, he might have met him about a week before in the street in relation to directions about the location of a street.

Evidence was received from a Dr Shute, Consultant Psychiatrist, who saw the applicant on 13 occasions between May and October 1997. When asked whether in his opinion the applicant was contrite, the doctor replied - "How can one be contrite about something he says he hasn't done."

Dr Shute was inclined to the view that whatever was the conduct of the applicant, it was an impulsive act, done on the spur of the moment, which can't really be explained, although if the doctor was under great stress at the time it may have provoked some inappropriate behaviour. Further he says that one possible explanation for the conflict between the versions of the conduct of the applicant given by the complainant and the version given by the patient is that the applicant is unable to admit or acknowledge that he did commit the offence alleged against him. In fact the only contrition the applicant really expressed before this Court is for the effect his conduct and the subsequent proceedings have had on himself and his family.

That highlights one of the problems about this particular application, for it is important for the applicant to establish the defect in character that led to his misconduct and his subsequent removal from the register and that it has been remedied.

In short the Tribunal finds that the applicant is guilty of the conduct alleged against him and found by the Jury and the earlier Tribunal. We accept that he was probably under considerable stress at the time and that his conduct was impulsive; such conduct possibly being a reaction to severe stress, of which he was not aware. We find that, at this time, the applicant does not accept that he sexually assaulted the patient and probably he never will. He continues to seek to exculpate himself by reiterating the explanation of the bulbocavernosus test and limits his contrition to the inappropriateness of that test in the circumstances.

There is abundant, uncontradicted evidence in the form of references from patients and other doctors in the area, and oral evidence of Dr Chow and the Reverend Perez, that apart from this particular and unfortunate incident, the applicant was a very conscientious, hard working and competent doctor.

The Tribunal is satisfied the applicant has kept up his medical knowledge to the best of his ability, and has demonstrated an insight into the detrimental effect of excessive stress upon his professional judgment. The applicant has persuaded the Tribunal that he recognises that his conduct at that time, whatever it might have been, arose from the fact that he allowed himself to work excessive hours and was constantly under too much stress and that if he is to practise medicine again he must change his lifestyle so that he cuts down stress, and working excessive hours, looks after his health and does not practise in isolation. He concedes that it would be wise for him not to practise in the same area, where patients had become dependent on him and that he should not practise as a sole practitioner for some time.

He appreciates that if he is to practise medicine again he must slow down, accept fewer patients, limit his hours of work, keep proper accounts and use electronic means to recall patients.

The Tribunal is satisfied the applicant is a man of good character and is competent to practise medicine, subject to certain conditions in the public's interest. Further we are satisfied that the reinstatement of the applicant as a Medical Practitioner would be of benefit to the Community and is unlikely to present a danger to the Community.

The Orders of the Tribunal are as follows-

1. That Wadie Farid Haddad be reinstated on the Register of Medical Practitioners of New South Wales - subject to the following conditions.
  - (a) He is not to work in professional isolation,
  - (b) To seek readmission to the Royal Australian College of General Practitioners, and to fulfil their requirements for Quality Assurance and Continuing Medical Education.
  - (c) To join the local Division of the Royal Australian College of General Practitioners and regularly attend their meetings.
  - (d) To seek treatments from a psychiatrist of his choice, at a frequency to be determined by that psychiatrist. He is to provide his treating psychiatrist with a copy of the Tribunal's Reasons for Determination.
  - (e) To attend a Board nominated psychiatrist for review at 6 monthly intervals for two years, and then at a frequency determined by the Board nominated psychiatrist. Such psychiatrist is to be provided with a copy of the Tribunal's Reasons for Determination.
  - (f) To keep medical records to the standard prescribed by the Royal Australian College of General Practitioners.
  - (g) That the applicant submit to a review of his practice, if and as directed by the Board at any time during the next 5 years, by a Peer Reviewer appointed by the Board and paid for by the applicant.

2. That the applicant pay the respondent's costs of this application, as agreed or taxed.

The applicant should appreciate that it is of some significance in our mind that the applicant did have a psychotic episode back in the first year he studied medicine at University, that he did attend a psychiatrist until about two years before this incident and, although there was no recurrence of any psychotic episode, it is certainly in the public interest that any possibility of that sort of thing should be well and truly taken care of.

Also, he should bear in mind that if undue stress was the cause of this incident and it was because, as the evidence says and we are satisfied on the balance of probabilities, that he was working too hard and too long and allowed too many people to be dependent on him, that that is a situation that must be a voided. Indeed, when the members of this Tribunal were settling these conditions, we started with the proposition that he was not to work in sole practice for the next five years, but then as we considered the matter further we have ultimately settled on the conditions we have, you will see we have excluded that specific condition. Nevertheless, the conditions are directed towards, as set out in condition 1, not working in professional isolation and having the benefit of peer support. In this day and age, I would think everybody is aware, there are many ways in which doctors practise medicine. No doubt some medical centres are an attraction, generally, to younger doctors without much experience and it is not unknown in such situations for doctors to work without any real peer support. I am not suggesting I have had experience of that situation but

I think it is a fact of life. So, the bottom line of these conditions is to ensure that the conditions which the applicant says existed at the time of this incident are not allowed to arise again.

JUDGE J B SINCLAIR QC

DR S MESSNER

MR D BERRY

DR K ILBERY

*Signed by Judge Sinclair  
on behalf of all members  
of the Tribunal*  
*J. B. Sinclair*