

MEDICAL TRIBUNAL OF NEW SOUTH WALES

DEPUTY CHAIRPERSON: JUDGE COOPER

MEMBERS: DR CHILD

DR PASFIELD

MS NAPIER

IN RE DR RONALD CYRIL HARE AND THE MEDICAL PRACTICE ACT

MONDAY 26 OCTOBER 1998

JUDGMENT

DEPUTY CHAIRPERSON: This is an application by Doctor Ronald Cyril Hare for an order for removal of certain conditions imposed upon his registration by a medical tribunal made on 21 March 1994.

To understand the application it is necessary to look at the past history as set out in the judgments of the medical tribunals of 14 December 1990 and 21 March 1994. In the course of its judgment of December 1990 the tribunal traversed the history that led to that application.

From this it appears that the applicant was first conditionally registered as a practitioner in November 1994 and his unconditional registration dated from November 1975.

The victim of the assault who was then sixteen about to turn seventeen, had been his patient for some time. The applicant was in fact the family doctor. The victim had

contracted glandular fever and had been under the care of the applicant for some months prior to the subject incident and saw him on regular occasions.

On 11 May 1987 the victim attended the applicant's surgery seeking ,medical treatment and in the course of that examination she disrobed. The evidence established that the applicant had in the past administered massage to the victim to relieve, while she was disrobed, aches and pains apparently arising from her condition.

During the course of the examination on 11 May 1987, the applicant caressed the victim around the vaginal and anal areas and after some moments said "I want to lick you". The victim who had passively endured the actions of the respondent, upon hearing those words, jumped up, grabbed her clothes and left the surgery in obvious distress. She immediately reported the incident to her parents who, shortly thereafter, confronted the respondent in his surgery and ultimately, in response to accusations made by the parents, the respondent admitted that he had done it, added that he 'had never done it before at his practice and used the words 'punish me, punish me' .

The matter was then reported to the police and charges were laid. Ultimately there were committal proceedings and the applicant was committed to stand his trial. On 20, April 1990 he pleaded guilty to the, charge of indecently assaulting the patient. He was convicted and placed on a recognizance to be of good behaviour for, a period of three years. He was also fined \$15,000.

The Tribunal pointed out that an aggravating factor was that the applicant, having become aware of sexual attraction to the patient, failed to take any precautionary

measures. He ought to have ensured a third party was present. He certainly should have informed the victim that there was no need to disrobe.

The Tribunal said that his failure to take those precautions raised a suspicion of pre-meditations but that Tribunal was not satisfied to the requisite degree that that was so. The Tribunal also added that it was satisfied that, apart from this isolated incident, the applicant was a person of good character and was further satisfied that he had given good and valued service to the community as a general practitioner.

Notwithstanding the gravity of the applicant's offence, the Tribunal expressed the view that it would not be desirable to leave him without any hope of ever practicing his profession again. It was of the view that the objects of protection of the community and the upholding of appropriate standards in, the medical profession could be fulfilled by fixing a period of three years from the date of the decision as being the period after which the applicant could apply to be re-registered.

The Tribunal then ordered that his name be removed from the register and that he be prohibited from applying for registration for a period of three years from 14 December 1990.

The applicant did make an application for review of those orders and that came on for hearing before a Medical Tribunal differently constituted. That Tribunal gave judgment on 21 March 1994. In the course of it- judgment the Tribunal said:

'The evidence adduced at this hearing establishes that after being de-registered Mr Hare unsuccessfully sought appropriate employment in New South Wales. That in May 1991, to support his wife and three children, he reluctantly travelled to the United Kingdom where he was registered as a

medical practitioner and he obtained employment in various hospitals and as a short term locum for a number of general practitioners'.

The Tribunal also stated that it had the benefit of a letter from the General Medical Council of England which set out particulars of his practice there at the relevant time, and stated:

'I can also inform you in confidence that no complaint has been received about Doctor Hare's conduct between May 1991 and October 1993'.

The judgment of the Tribunal then refers to a number of references received from English practitioners as to the applicant's practice in the United Kingdom. The Tribunal concluded that it was satisfied on the evidence that the applicant had then demonstrated that he was a fit and proper person to practice medicine in New South Wales. It then made an order that he be restored to the register of medical practitioners in New South Wales and that his right to practice be subject to the following conditions:

- '1. That for twelve months from today his practice be confined to working in a hospital or with other registered medical practitioners.
2. That except in the case of emergency where he has no other choice, that Doctor Hare shall not, in the course of his practice whether in a hospital or otherwise, medically examine female patients except in the continuous presence of a female chaperone. This I may say, in the opinion of this Tribunal, is no more than sound medical practice.
3. That he does not refrain from disclosing, in response to any reasonable request in his period of deregistration and the nature of his misconduct.

4. That he ~consult and co-operate with a specialist medical practitioner nominated by the New South Wales Medical Board to assist in his appreciation in the problems inherent in his previous misconduct.
5. That each party should pay its own costs of that hearing'.

At the commencement of the present hearing counsel for the applicant stated that conditions 1 and 5 no longer applied. With this we agree. He also stated that no review of condition 3 was sought. However he asked that conditions 2 and 4 be removed.

In support of the application the Tribunal has heard evidence from the applicant and from Doctor Morse to whom the applicant had been referred pursuant to condition 4 above.

The evidence of the applicant as set out in his statement, part of exhibit A, is that after his restoration to the register in March 1994 he applied for several positions in the Sydney area in large medical practices. When he advised potential employers of the conditions on his practice and the circumstances giving rise thereto, he was unable to gain employment in the Sydney region.

He then sought employment on the Central Coast and obtained employment with the Gateway Medical Centre Gosford Pty Limited now known as the Alfa Family Health Care Gosford Centre. That Centre employs a number of general practitioners and he works there twenty four hours per week, comprised of eight hours every Monday, Tuesday and Thursday.

His practice is a traditional general practice, treating approximately equal numbers of males and females. When consulting, it is, his practice, whenever possible, to leave the door of the surgery room open. When he has to perform a medical examination on a female patient he always ensures that a chaperone is present. Often the chaperone is a mother or sister of, the patient. On a few occasions the chaperone has been male, for example a father with a young daughter. If however a close relative or appropriate friend of the patient is not available, then one of the nurses employed at the practice is asked to attend.

The applicant pointed out that some of his female patients have expressed concern at the necessity for a chaperone who is not known to them, such as a nurse, as they feel it is in some instances an invasion of their privacy.

Although it was not a condition of his practice he forwarded chaperone schedules to the Medical Board for approximately two years after the commencement of his work with the medical centre. That practice discontinued at the end of 1995 with the approval of the Board.

He said that he commenced treatment with Doctor Morse in June 1994, seeing him approximately every second month, He has found that treatment to be helpful and he says that a similar incident to that which occurred in 1987 will not occur again.

The applicant gave evidence before this Tribunal in which he said that if the conditions are removed he intends opening a medical centre with other doctors in the form of group practice. He does not want to work as a sole practitioner. He also said that he was registered thirty seven years ago without conditions and wants to leave the profession without conditions.

Under cross examination he said that the incident in 1987 occurred because he did not control himself and he has now learnt to control himself. He has learnt to make it a point not to feel attraction to a patient. If he were to feel attracted he would then refer that patient to another doctor.

There was also tendered on the applicant's behalf a letter from Doctor McPherson, the medical director of the Gateway Medical Centre, in which he said that Doctor Hare commenced employment as a general practitioner at that centre on 13 April 1994.

Doctor Morse has prepared a report of 9 April 1998. In that report he said that he had been seeing the applicant since 1994 and had found no evidence that he is suffering from any major psychiatric or emotional disturbance. There is no evidence of any cognitive impairment. He found nothing in the applicant's history and presentation to suggest that he was not currently able to practice medicine. He was of the view that the conditions could be removed. He then goes on to say:

“I support Doctor Hare's application for removal of the conditions of his practice. In my opinion he no longer requires a chaperone when examining female patients because he has come to terms with the thoughts and behaviour and conduct that led to his problems. He is fully aware of the lack of judgment that led to his behaviour and of the devastating effect on his patients, himself and his family and the profession. He is able to recognise that such behaviour is totally unacceptable and has a knowledge of this and is able to discuss these matters at length and has no concern or fear of carrying out any further behaviour.

I believe that given his stability in regard to his emotional state over the last three years or so with no indication of any emotional disturbance, no, abnormal thoughts no concern about his medical practice, that there is no need for him to continue to see a psychiatrist. In my opinion Doctor Hare no longer represents a threat to the public and he has demonstrated by his professional activity in the United Kingdom and Australia that he can carry out his professional activities without any cause for concern.

'Further, that in his day to day life, his family relationships and in his interview with me demonstrates no indication or any evidence whatsoever that he is a threat to the public.'

Doctor Morse also gave evidence before the tribunal in which he 'confirmed his views as stated in that report. Since that report he has seen the applicant on 3 July and 22 October of this year.

The Health Care Complaints Commission called no evidence but tested the evidence called on behalf of the applicant by cross examination. In her final address, counsel for the Health Care Complaints Commission submitted that' the registration of the applicant be subject to the following conditions:

1. If in the future he practices ,in a group practice then the existing condition number 2 is to be apply.
2. If in the future he practices in a solo practice then female patients under twenty years of age are to be examined only in the presence of a third person such 'as parent or chaperone. Further, that a notice be displayed outside the consulting room to the effect that a third person be present when such female patients are being examined.

The evidence of the applicant that he does not want to leave the profession with the blemish of conditions on his registration, is not a sound basis for removal of those conditions. The principal considerations which the Tribunal takes into account in deciding the appropriate orders to be made, are the protection of the community, maintaining the standards of the medical profession and maintaining the public confidence in the profession.

In the circumstances of this, case this Tribunal has -to be satisfied that the defects in character which led to the applicant's deregistration in 1990 and to the imposition of conditions upon his re-registration in 1994, no longer exist, The fact that eleven years have passed since the commission of his sexual assault on his sixteen year old patient is not of itself sufficient grounds for removing the conditions.

However the evidence before this Tribunal does disclose certain features which are worthy of note. In the first place the decision of the 1990 tribunal included a finding that the subject offence was an isolated offence only. In the second place, the applicant has practiced medicine in the United Kingdom and in the New South Wales since then without coming under adverse notice.

Thirdly, Doctor Morse, to whom the applicant was referred by the Medical Board in 1994, has seen him regularly over the past four years and supports his application for the reasons which have already been stated.

In the light of all, of the evidence this Tribunal is comfortably satisfied on the balance of probabilities that the defects in character which led to the applicant's deregistration, and later re-registration subject to conditions I no longer exist.

Accordingly, pursuant to section 94(1) (d) of the Medical Practice Act the conditions to which the registration of Doctor Ronald Cyril Hare is subject are altered by deleting conditions:2 ,and 4.

COUNSEL DECLINED TO SEEK COSTS

As neither party is seeking an order for costs, the order will be that each party is to bear and pay its own