

IN THE MEDICAL TRIBUNAL OF NEW SOUTH WALES

THE MEDICAL PRACTICE ACT 1992

DEPUTY CHAIRMAN: HIS HONOUR JUDGE F.A. KIRKHAM

MEMBERS: DR P. ARNOLD
DR J. SCHNEEWEISS
MS R SEXTON

21 AUGUST 1998



No. 400002 of 1997 DR NGO CHAU PRAM

REASONS FOR DETERMINATION

Pursuant to S.51(1) of the *Medical Practice Act 1992* (the Act), the Health Care Complaints Commission of New South Wales (HCCC) complains as against the respondent Dr Ngo Chau Pham (Dr Pham), being a medical practitioner registered under the Act, that in relation to the treatment of fourteen (14) of his patients he has been guilty of professional misconduct and unsatisfactory professional conduct within the meaning of S.36 and S.37 of the Act in that

"The practitioner has engaged in conduct which demonstrates a lack of adequate knowledge, judgement and care in the practice of medicine and has engaged in conduct relating to the practice of medicine that is improper and unethical..."

PARTICULARS OF THE COMPLAINTS

1. Dr Pham was at all relevant times a general practitioner.

In respect of Patient A

1. *Between about December 1994 and, July 1996, the practitioner prescribed the drug of addiction Pethidine 50mg tablets, to the patient, on the dates and in the quantities shown in the Schedule annexed hereto and marked with the letter "A ".*

(a) without exercising responsible medical judgement as to whether it was appropriate to issue such prescriptions;

(b) in quantities in excess of recognised therapeutic standards of what is appropriate in the circumstances;

(c) for therapeutic use by the patient for a period exceeding two (2) months without obtaining an authority to so prescribe from the NSW Health Department contrary to section 28 of the Poisons Act 1966;

(d) when the practitioner knew or ought to have known that the Pethidine tablets so prescribed were being or were likely to be abused

2. *That between about 17, January 1995 and 14 March 1995, the practitioner prescribed the drug of addiction, Codeine Phosphate 30mg tablets, to the patient, on the dates and in the quantities shown in the Schedule annexed hereto and marked with the letter "A ".*

(a) without exercising responsible medical judgement as to whether it was appropriate to issue such prescriptions;

(b) for continuous therapeutic use by the patient, in combination with Pethidine 50mg tablets, for a period exceeding two (2) months without obtaining an authority to so prescribe from

the NSW Health Department contrary to section 28 of the Poisons Act 1966;

In respect of Patient B

4. Between about December 1994 and August 1996, the practitioner prescribed the drug of addiction, Pethidine 50mg tablets, to the patient, on the dates and in the quantities shown in the Schedule annexed hereto and marked with the letter "B":

- (a) without exercising responsible medical judgement as to whether it was appropriate to issue such prescriptions;*
- (b) in quantities in excess of recognised therapeutic standards of what is appropriate in the circumstances;*
- (c) for continuous therapeutic use by the patient for a period exceeding two (2) months without obtaining an authority to so prescribe from the NSW Health Department contrary to section 28 of the Poisons Act 1966;*
- (d) when the practitioner knew or ought to have known that the Pethidine tablets so prescribed were being or were likely to be abused.*

5. Between about January 1999 and August 1996, the practitioner prescribed Normison 20mg tablets to the patient, on the dates and in the quantities shown in the Schedule annexed hereto and marked with the letter "B":

- (a) without exercising responsible medical judgement as to whether it was appropriate to issue such prescriptions;*
- (b) in quantities in excess of recognised therapeutic standards of what is appropriate in the circumstances;*
- (c) when the practitioner knew or ought to have known that the Normison tablets so prescribed were being or were likely to be abused*

In respect of Patient C

6. *Between about June 1994 and May 1996, the practitioner prescribed the drug of addiction Physeptone 10mg tablets to the patient, on the dates and in the quantities shown in the Schedule annexed hereto and marked with the letter "C":*

- (a) without exercising responsible medical judgement as to whether it was appropriate to issue such prescriptions;*
- (b) when the practitioner knew or ought to have known that the Physeptone tablets so prescribed were being or were likely to be abused;*
- (c) for continuous therapeutic use by the patient for a period exceeding two (2) months without obtaining an authority to so prescribe from the NSW Health Department contrary to section 28 of the Poisons Act 1966;*

In respect of Patient D

7. *Between about June 1994 and October 1996, the practitioner prescribed Pethidine 50mg tablets, alone or in combination with Panadeine Forte tablets, to the patient, on the dates and in quantities shown in the Schedule annexed hereto and marked with the letter "D":*

- (a) without exercising responsible medical judgement as to whether it was appropriate to issue such prescriptions;*
- (b) when the practitioner knew or ought to have known that the Pethidine tablets so prescribed were being or were likely to be abused,*
- (c) when the patient was, in the practitioner's opinion, an addict within the meaning of section 27 of the Poisons Act 1966 or, in the exercise of responsible medical judgement, the*

practitioner should have formed the opinion that the patient was an addict, without obtaining an authority to so prescribe from the NSW Health Department contrary to section 28 of the Poisons Act 1966.

In respect of Patients E and F

8. The practitioner prescribed androgenic/anabolic steroids to the patients, on the dates and in the quantities shown in the Schedules annexed hereto and marked with the letters "E" and "F":

- (a) without exercising responsible medical judgement as to whether it was appropriate to issue such prescriptions;*
- (b) for a purpose that does not accord with the recognised therapeutic standards of what is appropriate in the circumstances;*
- (c) without undertaking any investigative procedures in respect of the condition of the patient;*
- (d) without taking any adequate steps to ensure that the substances so prescribed were administered appropriately;*
- (e) when the practitioner had not made adequate arrangements to monitor the condition of the patients.*

9. On 23 December 1994 and 6 May 1995 respectively, the practitioner prescribed ephedrine hydrochloride tablets to the patients and in the quantities shown in the Schedules annexed hereto and marked with the letters "E" and "F":

- (a) without exercising responsible medical judgement as to whether it was appropriate to issue such prescriptions;*
- (b) for a purpose that does not accord with the recognised therapeutic standards of what is appropriate in the circumstances;*

(c) when the practitioner knew or ought to have known that the ephedrine hydrochloride tablets so prescribed were being or were likely to be abused.

In respect of Patients "G", "H", "I", "J", "K", "L", "M" and "N":.

10. Between about October 1993 and, July 1995, the practitioner prescribed androgenic/anabolic steroids to the patients on the dates and in the quantities shown in the Schedules annexed hereto and marked with the letters "G", "H", "I", "J", "K", "L", "M" and "N"

- (a) without exercising responsible medical judgement as to whether it was appropriate to issue such prescriptions;*
- (b) for a purpose that does not accord with the recognised therapeutic standards of what is appropriate in the circumstances;*
- (c) when the practitioner knew or ought to have known that the androgenic/anabolic steroids so prescribed were being or were likely to be abused;*
- (d) without undertaking any investigative procedures in respect of the condition of the patient;*
- (e) without taking any adequate steps to ensure that the substances so prescribed were administered appropriately;*
- (f) when the practitioner had not made adequate arrangements to monitor the condition of the patients.*

In respect of Patient "N"

11. Between about November 1993 and December 1994, the practitioner prescribed Hemineurin capsules to the patient, on the dates and in the quantities shown in the Schedule annexed hereto and marked with the letter

"N".

- (a) *without exercising responsible medical judgement as to whether it was appropriate to issue such prescriptions;*
- (b) *for a purpose that does not accord with the recognised therapeutic standards of what is appropriate in the circumstances.*

In respect of the Patients referred to in Schedule "0".

11. Between about 15 February 1994 and 26 August 1995, the practitioner prescribed clonazepam, commonly known as Rivotril tablets, to the patients, on or about the dates and in the quantities shown in the Schedule annexed hereto and marked with the letter "0" without exercising responsible medical judgement as to whether it was appropriate to issue such prescriptions

12. The practitioner failed to maintain adequate medical records in relation to the patients referred to in the Schedules annexed hereto and marked with the letters 'A' 'I' 'W' 'C', 'D' 'E', 'T', 'G' 'H', 'Y', 'Y', 'K', 'I', 'W' and 'N'

THE PROCEEDINGS BEFORE THE TRIBUNAL

Dr Pham represented himself and admitted the particulars of the complaint made by the HCCC. The matter for the determination of the Tribunal was the question of whether the conduct admitted amounted to professional misconduct or unsatisfactory professional conduct and if so, what preventative action should follow.

BACKGROUND TO COMPLAINT

It is to be noted that on 13th September 1990 he received a letter from the Department of Health under the hand of Mr Mewes following a visit by Mr Ellis of the Pharmaceutical Services Division. This visit followed a telephone call from a Bankstown pharmacist expressing his concern in regard to the number of prescriptions for *Endone* being obtained by a particular patient. Dr Pham received a written warning from Mr Mewes as to his obligations under S.28 of the Poisons Act, and in general, in prescribing drugs of addiction to persons who may be addicted.

FURTHER DEVELOPMENTS

On 6th November 1996 two officers from the Department of Health interviewed Dr Pham at his surgery at 84 John Street, Cabramatta. The interview lasted about two hours and a transcript thereof ran to some 64 pages. The transcript was included as part of the tender of documents in Exhibit B. There was no objection taken to its tender.

Mr Harris, solicitor for the HCCC, wrote to Dr Pham concerning the complaint received from the Pharmaceutical Services Branch of the New South Wales Health Department. Mr Harris indicated in his letter that a decision had been taken to investigate the complaint and an outline of some of the allegations was made. In addition to this Mr Harris requested responses to particular questions in his letter.

On 10th April 1997 Dr Pham responded to these questions. Both his response and Mr Harris' earlier letter came into evidence as part of Exhibit B.

The Commissioner of the HCCC, Ms Marilyn Walton, wrote to Dr Pham on 5th September 1997. In that letter she informed Dr Pham that the investigation of the HCCC had been completed and that the HCCC proposed to prosecute him, based upon the complaint made by the Pharmaceutical Services Branch, New South Wales Health Department. Particulars were provided. Particulars were also provided of the views of medical practitioners who, at the HCCC's request, had reviewed the conduct of Dr Pham including his prescription of drugs of addiction, benzodiazepines, anabolic steroids, ephedrine hydrochloride, *Hemineurin* and also in relation to the keeping of his medical records.

Dr Pham responded on 25th September 1997 and his response became part of Exhibit B. In this response he acknowledges that he was at fault in regard to his failure to apply for authority to prescribe such drugs and he provided a measure of explanation for his conduct.

THE EVIDENCE OF THE EXPERT WITNESSES

Dr Seidler gave evidence on behalf of the HCCC. He is in general practice at Potts Point and has a special interest in drugs and alcohol which he styles as "addiction medicine". His report of 28th July 1997 was in evidence. The Tribunal accepts Dr Seidler's opinions as expressed in his report and otherwise given in his evidence. In his report he deals with each of the allegations made by the HCCC.

For the purposes of this determination reference will first be made to the particulars relative to each individual patient identified by letter. These particulars and their references appear earlier in this determination under the heading "Particulars of the Complaints". Thereafter, reference will be made to that part of Dr Seidler's report dealing with the allegations included in that complaint.

Dr Seidler was of the view that the conduct of Dr Pham, itemised as follows, was a departure from the recognised standard within the medical profession in relation to the proper exercise of responsible medical judgement; and/or his conduct demonstrated a lack of adequate knowledge, judgement or care in the practice of medicine; and/or that this conduct was improper and unethical so as to attract the strong disapproval not only of himself but of his professional peers of good repute and standing.

In respect of Patients A, B and C

- The prescribing of *Pethidine* and codeine phosphate for continuous periods in excess of two months.
- The failure to notify the NSW Department of Health or to make an application to continue to prescribe Schedule 8 drugs of addiction in excess of two months.

In respect of Patient A

- The prescription of *Pethidine* tablets between December 1994 and July 1996 for severe recurrent abdominal pain due to abdominal adhesions;
- The prescription of *Pethidine* tablets in large amounts together with benzodiazepines for this condition;
- The prescription of 100 *Pethidine* 50mg tablets together with 100 *Serepax* 30mg tablets on 30th December 1994.

Comment

It was Dr Seidler's view that the prescription of 100 *Pethidine* 50mg tablets together with 100 *Serepax* 30mg tablets on 30th December 1994 was a gross over prescription of two drugs which when combined could produce intoxication and overdose symptoms. The clear evidence from this conduct is that the patient was dependent upon *Serepax*. It was thus inappropriate to treat chronic severe abdominal pain due to abdominal adhesions with *pethidine*, *Serepax* and codeine phosphate tablets.

In respect of Patient B

- The prescription of pethidine 50mg between December 1994 and August 1996 in the quantities outlined Schedule B for back pain in the face of clear evidence of over prescription of these tablets together with large quantities of *Normison* 20mg.
- The co-prescription on 10th May 1995 of 100 *Pethidine* 50mg and 100 *Normison* 20mg tablets.

Comment

Dr Seidler was of the opinion that this was extremely hazardous given the clear dependence on these medications by the patient. Both drugs were inappropriate for severe attacks of low back pain and this volume of prescribing made it impossible for a patient to take this quantity of medication in the time elapsed, leaving a strong suspicion that the patient was trafficking the medication.

In respect of the Patients in Schedule O

In the manner and circumstances in which he issued *Rivotril* prescriptions.

Comment

The usual dosage of *Rivotril* is 0.5mg twice daily. Dr Pham prescribed *Rivotril* 2mg tablets for a number of patients in the schedule. *Rivotril* 2mg in quantities of 200 tablets is, in the view of Dr Seidler, a potentially lethal dose and that *Rivotril* (*clonazepam*) has been implicated by the Coroner as a benzodiazepine associated at autopsy with overdose deaths in narcotic addicts.

In respect of Patient C

- The prescription of *Physeptone* 10mg between June 1994 and May 1996 in the quantities outlined in Schedule C for lower back pain.

Comment

Physeptone is a synthetic long acting narcotic requiring an authority.

In respect of Patient D

- During the period June 1994 and October 1996 in prescribing Pethidine 50mg in the quantities outlined in Schedule D for severe migraine and lower back pain;
- The prescription of these tablets in lots of 100 for periods of greater than two months without an authority;

Comment

The co-prescription of *Pethidine* 50mg, *Panadeine Forte* together with benzodiazepines was hazardous prescribing.

In respect of Patients A, B, C and D

- That Dr Pham should have known that the *Pethidine* 50mg which he prescribed to Patients A, B and D and *Physeptone* 10mg which he prescribed to Patient C, were being or were likely to be abused.

In respect of Patient E

- The prescription of 250 *Proviron* tablets in an uncontrolled setting without evidence of adequate physical examination or endocrinological work up.

Comment

Dr Seidler's view was the concomitant prescription of ephedrine hydrochloride and *Proviron*, where the patient wanted to improve his muscular shape and definition, gives rise to a real concern that some of the medication may have been diverted to other patients or illegally disposed of.

In respect of Patient N

- The prescription of on 31st January 1992 *Deca-Duraboin*, *Sustanon* and *Primoboin Depot* together with other anabolic steroids and gonadal hormones without any evidence of weight measurement, blood pressure

measurement, blood sugar level, liver function tests or any other clinical examination.

The prescription of *Anapolon*, *Sustanon*, *Halotestin* and *Hemineurin*.

Comment

Dr Seidler was of the view that this pattern of prescribing raised suspicions that the patient was using this combination for body building purposes only.

In respect of Patients E and N

- The prescription of anabolic steroids without taking a clear history or engaging in investigative procedures in respect to the conditions of the patients and without taking any steps to ensure those substances prescribed were administered properly.
- The prescription of *Deca-Durabolin* ampoules, *Sustanon* ampoules, *Primoteston* ampoules, *Proviron* tablets, *Anapolon* tablets, *Primobolin* tablets and/or *Halotestin* tablets in order to assist them in body building activities.

Comment

In prescribing these quantities, costing in some cases in excess of \$400, Dr Seidler was of the view that Dr Pham should have been alerted to their potential misuse.

In respect of Patients E to N

Comment

Dr Seidler was of the view that in prescribing as he did and in the quantities outlined in Schedules E to N, Dr Pham grossly over prescribed anabolic steroids and sex hormones. The absence of adequate instructions as to the taking of the medications and leaving it to the patients' discretion was extremely hazardous prescribing.

In respect of Patients E and F

- The prescription of ephedrine hydrochloride on the relevant dates and the extremely large quantities shown in Schedules E and F for the purpose of assisting the patients' body building activities.

The Tribunal also notes the comments of Dr Seidler in paragraph 2(a), 3(a), 4 (a), 5 (a), 6 (a), (b), (c), (d), 7 (a), 8 (a), 9 (a). These paragraphs deal with Dr Seidler's views on the recognised standards within the medical profession in relation to the prescription of therapeutic quantities of drugs of addiction, benzodiazepine medication, steroids and sex hormones, ephedrine hydrochloride, *Hemineurin* and the prescription of drugs to patients suspected of abusing drugs. The Tribunal specifically accepts Dr Seidler's evidence on this point.

In addition to his report, Dr Seidler gave oral evidence. He said that in relation to the prescription of *Rivotril* some sort of history of epilepsy and/or epileptic fits would be necessary together with a report from either a neurologist or a hospital where they had attended and obtained a CT scan or an EEG which indicated the level of epilepsy and what medications had been prescribed for them. He said that *Rivotril* was a well known drug of abuse and had been so since the late 1980's. He said that it was largely prescribed for temporal lobe epilepsy which is not all that common and that he would be suspicious if a patient nominated *Rivotril* for his or her epilepsy.

In the absence of any CT scan or similar investigation, Dr Seidler said he would have reinstated an investigatory process including CT scan and referral to a neurologist. He said that he would not prescribe *Rivotril* as his first drug of choice nor indeed the second or possibly even the third if there was any evidence of concomitant history of drug and alcohol problems in the past because of the potential for abuse. Dr Seidler nominated three or four others which had a better record of success and were unlikely to be abused because of the absence of any sedating effect experienced with *Rivotril*.

When dealing with the *Hemineurin*, Dr Seidler said that it was usually prescribed in an institutional setting where there was supervision of the medication being taken. He thought it did not have a place in general practice for an outpatient, particularly where the patient was unstable and still drinking because of the risk of overdosing. Indeed, he described that practice as "extremely hazardous".

He said of the prescription of *Physeptone*, (methadone), which is used in the treatment of heroin addiction, that it was not uncommon for large doses to be used in a controlled setting, but the prescription of this drug to an outpatient without authority, without control and without supervised dosing, was extremely dangerous and potentially hazardous to the patient. In addition, there was a ready market for *Physeptone* tablets on the street. *Physeptone* tablets are easily ground up and injected with water intravenously. The evidence for abuse, he said, were what he described as track marks on the arms, legs and other sites of intravenous injection. There was also available a service at the NSW Department of Health within the Pharmaceutical Services Branch, by telephone access to a database, as to whether or not the patient was either on methadone or has been on methadone before.

Dr Seidler said of *Pethidine* that it was a drug regularly abused in tablet form by people who are drug dependent. It is a short acting narcotic which needs to be taken four to eight times a day to maintain an analgesic effect. He thought it inappropriate for the long term treatment of pain.

Dr Pham asked Dr Seidler about the approval given by the Pain Clinic about the prescription of 300 tablets of *Physeptone* to a patient. Dr Seidler conceded that it was not unusual for patients who have serious pain to take a higher dose than was usually indicated but he added that if the patient had a problem with drug dependence as well, then one had to be careful about how many

were prescribed for them due to the potential for them to be diverted to other people or to be used inappropriately.

What concerned Dr Seidler the most in relation to Dr Pham's practice of prescribing, was the sheer quantities of medication prescribed at one time, the risk of overdose to the patient and the potential that the medication was being diverted to other people on the street who have no knowledge or understanding of how the medication should be taken. He cited cases of people who have ended up in hospital with benzodiazepine poisoning.

He thought that if a patient was dependent on these medications then they should be dispensed daily at a pharmacy near the practice with constant contact with the pharmacist.

Dr Seidler was not of the view that Dr Pham's records were, by and large, inadequate. He was mainly concerned with the repeated prescriptions for medications which were not indicated for the conditions noted. For example, *Valium* and *Pethidine* were prescribed inappropriately for urinary tract infections. He was also critical of Dr Pham's failure to register the number of tablets prescribed in the medical records.

His main concern was that there was a continual prescription for conditions for which these medications were not indicated. He cited an example that *Valium* and *Pethidine* had been prescribed for urinary tract infections. He said that the numbers of tablets were not registered in the medical records, merely the frequency of the dose and he thought that to be an omission as well.

Dr Seidler thought that there was insufficient attention paid to the education of young undergraduates in respect to prescribing Schedule 8 drugs and noted that such training was confined, usually, to one lecture.

There was a note of sympathy for Dr Pham in Dr Seidler's evidence when he expressed the belief that there was not enough teaching in the area and thought that a lot of doctors were cast into the suburbs with inadequate knowledge of how to deal with these difficult patients and that once they start treating one or two of this type of patient, in the words of Dr Seidler, "they get a reputation as a soft touch if they begin prescribing and the whole thing just takes off and has its own momentum".

Dr Seidler said that of the between 5 and 10 patients in his practice being treated for temporal lobe epilepsy, none are in receipt of *Rivotril* as a medication and all would have had at least an EEG to establish that condition.

He noted the absence in the records of ongoing diagnosis, evidence of reaction to the drugs prescribed and they contain, for the most part, repeats of the prescriptions noted. He was of the view that the nature of the drugs prescribed and the level of the prescribing would tend to indicate, to Dr Seidler, that that patient was drug dependent. He thought that there had been no exercise of any medical judgement in the ongoing prescription of the drugs.

Dr Seidler thought that the combinations of the drugs that Dr Pham had prescribed indicated a certain lack of knowledge of the interactions that these drugs may have and the effects that they may have in combination upon a patient. He was of the view that benzodiazepines together with opiates are a potentially hazardous mixture. The patient becomes drowsy and unfocussed and may exhibit bizarre and unusual behaviour. There is a real risk the patient may suffer injury by falling over, or causing a car accident. He believed it likely Dr Pham prescribed on demand; in other words, the patients decided what they wanted and Dr Pham merely wrote the prescriptions. Dr Seidler said when a patient nominates a drug of dependence as a drug of choice, the practitioner should be immediately alerted to the likelihood of the patient being drug dependent.

DR PHAM'S EVIDENCE

Dr Pham came to Australia as a refugee in 1979 and he graduated in August of 1988 as a medical practitioner and was registered. He did one year of internship at Lidcombe Hospital and did his accident and emergency term at St Joseph's Hospital, Auburn. Following this he went straight into private practice.

He has two brothers, Peter and Joseph, the latter graduating in medicine one year after Dr Pham. The former joined him about a year ago after his year as an intern. Following his first year's residency, Peter joined Dr Pham for a year and then opened his own practice. Between 1994 and 1996 Dr Pham had two practices, one at Bankstown and one at Cabramatta.

He told the Tribunal that between 1992, and indeed up to almost the date of hearing, he had been involved in an acrimonious matrimonial dispute. There were custody, property settlement and defamation proceedings and this led him to a point where he had to sell one of his two practices for \$120,000 to ameliorate a debt of \$650,000. He has now remarried and he and his wife have a young child.

Dr Pham announced that he fully admitted the charge. He considered that his depression was the main reason that his judgement had been affected.

He said that Patient J had presented him with a letter from a Sports Institute in respect of the prescription for steroids for body training. Having spoken to one of his colleagues he ceased prescribing steroids. He knew he had made a mistake and that he had to learn from it.

He said that in regard to Schedule 8 drugs patients would come to his practice in Cabramatta from all over the place from different localities. He said that he

did not pay attention to that and thought that it was normal. He said that it was difficult to screen addicts from people having genuine problems.

He said in relation to Patient B he knew that she was drug dependent, including *Normison* and he attempted to get her to a detox centre a few times but this failed. He said as to his prescribing of *Rivotril* that he trusted the patients giving him a history of epilepsy but when he became aware about mid 1996 that *Rivotril* was abused by people he ceased prescribing it.

He outlined the nature of his practice. His usual work day started at Sam. He would see between 15 and 40 patients per day, six days per week. He would work the mornings at Cabramatta and the afternoons at Bankstown.

He diagnosed himself as being depressed and joined Tai Chi classes to help him. He did not see any other doctor to discuss it and put the depression down to problems that he was having with his first wife.

When cross examined by counsel for the HCCC, Dr Pham fared poorly. He said in response to why he did not keep notes of his examinations prior to prescribing drugs, that whilst he did examine his patients, he did not write it down. When questioned as to his prescription of 1000 ephedrine hydrochloride tablets in relation to their potential for abuse, he said that he did not think about it at the time, that it did not come into his mind. Much of his cross examination brought forth many such pathetic and evasive responses.

The Tribunal was left with the overall impression that Dr Pham was not being particularly truthful.

CONCLUSIONS

It is to be noted that it was only about two years after his graduation from University and his registration as a medical practitioner that the first warning was given to him by way of letter for over prescribing.

The Tribunal is comfortably satisfied that there are many serious objective factors which call into question the adequacy of Dr Pham's knowledge, of his skill, of his judgement and care in the practice of medicine. This was not an isolated event. Given the nature of his practice, the Tribunal is of the opinion that the number of patients involved was of significance. The Tribunal also considered that the quantity and range of drugs supplied on prescription illustrated a significant lack of judgement on the part of Dr Pham. Ephedrine hydrochloride is an extreme example.

Another feature of aggravation is the extended period over which time Dr Pham prescribed these drugs and their diversity and in the combinations they were prescribed to various patients. There is more than enough evidence to establish that Dr Pham's lack of judgement and/or lack of adequate knowledge of the substances he was prescribing, had significant potential to cause harm to his patients and perpetuate the addiction of those of them who were already addicted to various substances. The Tribunal considered that his failure to inform himself by the reading of materials sent to him from the Medical Board was also a serious flaw in his practice of medicine. Further, the Tribunal accepts the submission from the HCCC that Dr Pham's medical records were quite inadequate.

There are four areas of conduct which raise deep concerns for the Tribunal. These four areas may be described as:

- (i) the vast distances that some of his patients travelled to consult him at his surgeries at Bankstown or Cabramatta, for example, Patient "F" came from

Sans Souci, Patient "A" came from Kirribilli or North Sydney, Patient "I" from Bateau Bay, another according to Dr Pham came from Wollongong;

- (ii) the fact that many of his patients nominated their drug of choice which he proceeded to prescribe in vast quantities coincidentally with other contra indicated drugs:
- (iii) that Dr Pham too readily accepted the unlikely presentations of many of his patients; and
- (iv) that there was a significant risk prescribing in the quantities that he did, the type of drugs that he did, that his patients may have disposed of, at least part of those drugs prescribed, for profit. Ephedrine Hydrochloride is a good example when on 6th May 1995 he prescribed 1000 tablets of 60mg because a patient asked for it.

The members of the Tribunal were not impressed by Dr Pham's responses as recorded in the transcript of the interview between officers of the Department of Health and himself.

In combination they present compelling evidence that Dr Pham knew or ought to have known that the dispensing of drugs of addiction in the quantity and range that he did, to some of his patients about whom he must have at least suspected, if he did not know for certain, that they were addicted to various types of narcotic substances, was quite wrong. This conduct, in the view of the Tribunal, was most improper and decidedly unethical. The Tribunal is comfortably satisfied on the probabilities that, at worst, Dr Pham was wilfully blind and at best, reckless, as to the genuine need for prescribing as he did.

Subjectively, Dr Pham is still a young man but with limited post-graduate supervised experience. The Tribunal notes the breakdown of his family and the emotional consequences flowing there from, together with the financial stresses which follow such life events. In his favour also is his co-operation with the investigating officers in November 1996 and the fact that he admitted

to this Tribunal to prescribing in the range and quantities alleged in the complaint. Subsequent to the interview he no longer prescribes Schedule 8 drugs of addiction.

THE LAW

Professional misconduct is defined by s.37 of the Medical Practice Act 1992 as amended as:

"Unsatisfactory professional 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." (s 37 Medical Practice Act as amended)

The test of professional misconduct remains as stated by Priestly JA in the decision of the Court of Appeal in Qidwai -v- Brown (1984) 1 NSWLR 100 namely:-

"Whether the conduct was in such breach of standards accepted by the medical profession in this state which would reasonably incur the strong reprobation of fellow practitioners of good repute and competence."

The importance of compliance of medical practitioners with the law in relation to the prescribing of dangerous drugs and drugs of addiction cannot be stressed too highly.

*"Strict adherence to the statutory requirements relating to the use of drugs of addiction is required by medical practitioners
it is clear beyond argument that the proper handling and prescribing of drugs by medical practitioners are of the greatest importance to the community. If a medical practitioner handles or carries out that very great responsibility in a way which is reckless*

and which shows a disregard for the law it cannot be said he is fitted at such time to be a medical practitioner".
(See Spicer -v- New South Wales Medical Board & ors, Court of Appeal, 19 February 1981)

In an inquiry such as this it is the present fitness to practise which is the principal and ultimate issue of public interest. See Herron -v- McGregor (1986) 6 NSWLR 246, where McHugh JA (as he then was) said:

"In many cases the protection of the public and the maintenance of professional standards requires that the names of doctors be removed from the Register. However, it is his present fitness to practise which is the principal and ultimate issue of public interest."

The onus of proof of the complaint lies on the complainant. The standard of proof is the test described by the High Court in Briginshaw -v- Briginshaw 60 CLR 336 which is further explained in Rejtek & anor -v- McElroy & anor 112 CLR 517, and confirmed more recently by the Court of Appeal in Bannister -v- Walton 1993 30 NSWLR 695. Such standard of proof is frequently referred to by the short hand phrase of "comfortably satisfied on the balance of probabilities".

DETERMINATION

The ultimate findings of the Tribunal are:

1. The respondent is guilty of professional misconduct.

In deciding what orders are appropriate for the circumstances of this case, the Tribunal must take into account in the exercise of its protective jurisdiction the following:

1. The maintenance of the standards of the medical profession;

2. The maintenance of public confidence in the medical profession; and
3. The protection of the community.

The Tribunal also bears in mind the gravity of the consequences of an order removing the name of a medical practitioner from the Register.

ORDERS

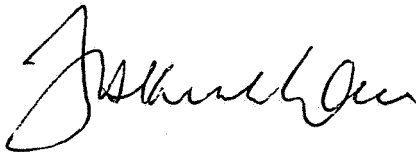
The Tribunal makes the following orders:

1. That pursuant to Section 64 (1) of the Act, Dr Pham be suspended from practising medicine from a day fourteen days after the date of order until a day in January 1999, being the date of the commencement of the first term of public hospital employment in New South Wales;
2. That Dr Pham seek and undergo psychiatric treatment and/or counselling with a psychiatrist of his choice, such treatment to commence within two months of the date of order;
3. That at the expiry of the suspension referred to in Order 1, the following conditions be imposed on Dr Pham's registration:
 - (a) that within seven days of commencing practice, he notify the Board in writing of the name of his nominated treating psychiatrist;
 - (b) that he authorise his psychiatrist to notify the Medical Board immediately, if the psychiatrist finds a significant deterioration in his mental state sufficient to affect his capacity to practise medicine;
 - (c) that he work as an employed practitioner in a public hospital for a period of at least two years under a supervisor approved in writing by the Medical Board;
 - (d) that he authorise the supervisor to report to the Board on his progress on a monthly basis for the first three months, and

thereafter on a quarterly basis, for the period of his supervision;

(e) that he complete such educational courses or activities as may be specified and directed by the Medical Board from time to time to address his deficiencies in knowledge, judgement and care in the practice of medicine as set out in the particulars of this complaint and in the Tribunal's reasons for decision.

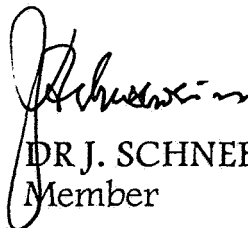
4. That any application by Dr Pham to the Pharmaceutical Services Branch of the NSW Department of Health for the variation and/or lifting of the restrictions on his rights in relation to Schedule 8 drugs be made only in consultation with the Medical Board, such consultation to be evidenced in writing and signed by the Registrar of the Board or his delegate.
5. That pursuant to Section 93 of the Act, these orders may be reviewed by the Medical Board.



F.A. KIRKHAM, DCJ
Deputy Chairman



DR P. ARNOLD
Member



DR J. SCHNEEWEISS
Member



MS R. SEXTON
Member

ANNEXURE

PRESCRIBING SCHEDULES

SCHEDULE "A"

DOCTOR: NGO CHAU PHAM

PATIENT: [SJ]

Date	Pethidine 50mg tabs	Serepax 30mg tabs	Codeine Phosphate 30mg tabs	Promethazine amps	Other
30.12.94	100	100			
17.1.95		25	0		
21.1.95	100				
22.1.95		25			
28.1.95			20		
4.2.95	100	25			
8.2.95			20		
9.2.95		25			
13.2.95			20		
18.2.95	100	25			
22.2.95			20		
24.2.95		25			
25.2.95	100				
6.3.95		25	20		
10.3.95	100	25			
14.3.95			20		
15.3.95		25			
21.3.95	100	25			
31.3.95	100				
10.4.95	100				
21.4.95	100	25			
1.5.95	100				
10.5.95	100				
19.5.95	100				
2.6.95	100				
14.6.95	100				

Date	Pethidine 50mg tabs	Serepax 30mg tabs	Codeine Phosphate 30mg tabs	Promethazine amps	Other
24.6.95	100				
4.7.95	100				
10.7.95	100				
21.7.95	100				
3.7.95	100				30 x Avomine 25mg
11.8.95	100				50 x Valium 5mg 30 x Avomine 25mg
21.8.95	100				30 x Avomine 25mg
1.9.95	1.00				
9.9.95	100				30 x Avomine 25mg
18.9.95	100				
27.9.95	100				
6.10.95	100				30 x Avomine 25mg
13.10.95	100				30 x Avomine 25mg
21.10.95	100				
27.10.95	100			10	
3.11.95	100			10	30 x Avomine 25mg
14.11.95	100				30 x Avomine 25mg 50 x Valium 5mg
24.11.95	100				30 x Avomine 25mg
1.12.95	100				
8.12.95	100				
15.12.95	100				
23.12.95	100				50 x Valium 5mg
6.1.96	100				
20.1.96	100			10	
27.1.96	100				30 x Avomine 25mg
3.2.96	100			10	50 x Valium 5mg
20.2.96	100			10	
27.2.96	100				
8.3.96	100				

Date	Pethidine 50mg tabs	Serepax 30mg tabs	Codeine Phosphate 30mg tabs	Promethazine amps	Other
20.3.96	100				
9.4.96	100				
19.4.96	100				
3.5.96	100				
17.5.96	100				
25.6.96	100				
9.7.96	100				

SCHEDULE "B"

DOCTOR: NGO CHAU PHAM

PATIENT: [RM]

Date	Pethidine Tablets	Normison 20mg	Other
28.12.94	100		
17.1.95	100		
27.1.95		50	
1.2.95	100	100	
8.2.95		50	
i u.2.95	100		
24.2.95		100	
28.2.95		100	
4.3.95		100	
7.3.95	100		
11.3.95		50	
17.3.95		100	
22.3.95		100	
24.3.95	100		
29.3.95		100	
4.4.95		100	
11.4.95		50	
19.4.95	100	100	
3.5.95		100	
10.5.95	100	100	Prozac
16.5.95		100	
23.5.95		100	
30.5.95		100	
2.6.95	100		
19.6.95		100	

Date	Pethidine Tablets	Normison 20mg	Other
23.6.95		100	
18.7.95		100	
25.7.95	100	100	
9.8.95		100	
28.8.95	100		
11.9.95		50	
15.9.95		100	
22.9.95	100	50	
6.10.95		50	
11.10.95	100	100	
21.10.95		100	
30.10.95		100	
3.11.95	100		
6.11.95		50	
17.11.95	100		
27.11.95		100	
1.12.95	100	100	
20.12.95	100	100	
29.12.95		100	
3.1.96	100		
13.1.96	100		
9.2.96	100		
16.2.96		100	
21.2.96		100	
27.2.96	100	100	
1.3.96		100	
9.3.96	100		
16.3.96	100		

Date	Pethidine Tablets	Normison 20mg	Other
20.3.96		100	
28.3.96	100		
30.3.96		100	
3.4.96	100		
12.4.96	10	100	
19.4.96	100		
27.4.96		100	
1.5.96	100		
J.96		100	
21.5.96		100	
27.5.96	100	100	
3.6.96		100	
5.6.96	100		
21.6.96	100	100	
25.6.96		100	
3.7.96	100	100	
9.7.96	100	100	
15.7.96		100	
.96	100	100	
27.7.96	100		
5.8.96	100	100	
10.8.96	100	100	
16.8.96	100	100	
22.8.96		100	

SCHEDULE "C"

DOCTOR: NGO CHAU PHAM

PATIENT: [GH]

Date	Physeptone 10mg Tablets	Other
2.6.94	20	
14.6.94		Panadeine Forte x 20
16.6.94	20	
12.7.94		Panadeine Forte x 20
1 6.8.94	20	
3.9.94	20	
17.9.94	20	
4.10.94	20	
11.10.94	20	
17.10.94	20	
2.11.94	20	
15.11.94	20	
25.11.94	20	
9.1.95	20	
17.1.95	20	
27.1.95	20	
10.2.95	20	
20.2.95	20	
10.4.95	20	
21.4.95	20	
1.5.95	20	
8.5.95	20	
26.5.95	20	
5.6.95	20	
9.6.95	20	
21.6.95	20	

Date	Physeptone 10mg Tablets	Other
12.7.95	20	
22.7.95	20	
4.8.95	20	
12.8.95	20	
23.8.95	20	
15.9.95	20	
23.9.95	20	
30.9.95	20	
3.11.95	20	
10.11.95	20	
27.11.95	20	
2.12.95	20	
9.12.95	20	
12.12.95	20	
20.12.95	20	
29.12.95	20	
10.1.96	20	
17.1.96	20	
31.1.96	20	
16.2.96	20	
20.2.96	20	
1.3.96	20	
20.3.96	20	
29.3.96	20	
10.5.96	20	
18.5.96	20	
31.5.96	20	

PATIENT: [GK]

Date	Pethidine 50mg tablets	Panadeine Forte	Serepax 30mg	Normison	Ducene
27.6.94		20			50
28.6.94	100				
26.8.94		20			50
2.9.94				25	
6.9.94		100			50
20.9.94		20			50
17.10.94		20			50
31.10.94	100				
2.11.94			25		
14.11.95		20			50
25.11.94	100				
28.11.94		20			50
6.12.94		20			50
?1.95		20			50
17.2.95		20			50
24.2.95		20			50
15.3.95		20			50
28.4.95		100			50
3.5.95	100	20			
21.5.95		20			
5.6.95		20			50
16.6.95		20			
26.9.95	100	Mersyndol Forte x 20			
6.10.95	100				
13.10.95		20			
23.10.95			25	25	

Date	Pethidine 50mg tablets	Panadeine Forte	Serepax 30mg	Normison	Ducene
29.11.95		20			50
8.12.95	100				
12.12.95			25		
18.12.95		20			50
12.1.96		20			
2.2.96		20			
26.2.96		20			50
20.3.96		20			50
26.3.96		20			
.4.96		20			
23.4.96		20			50
29.4.96		20			50
11.5.96		20		25	
26.5.96				25	
28.6.96		20			50
30.7.97	100				
28.8.96		20			
11.10.96	50				

SCHEDULE "E"

DOCTOR: NGO CHAU PHAM

PATIENT: [AC]

Date	Ephedrine Hydrochloride 30mg tablets	Proviron 25mg tablets
23.12.94	1000	
3.12.94		250

SCHEDULE "F"

DOCTOR: NGO CHAU PHAM

PATIENT: [MRB]

Date	Ephedrine Hydrochloride 30mg tablets	Proviron 25mg tablets	Anapolon 50mg tablets
23.12.94		250	
23.12.94	1000		
6.5.95			200
6.5.95	1000 (60mg tablets)		

SCHEDULE "G"

DOCTOR: NGO CHAU PHAM

PATIENT: [GM]

Date	Deca-Duraboiin 50mg amps	Sustanon 250mg amps	Anapolon 50mg tablets	Deca- Durabolin 100mg amps	Primobolin 5mg tablets
12.10.93					50
3.6.94		12			
28.6.94			200		
22.7.94					
20.9.94	12				200
30.9.94		6			
25.10.94	18		300		
25.2.95			300		
25.2.95		12			

SCHEDULE "H"

DOCTOR: NGO CHAU PHAM

PATIENT: [MA]

Date	Anapolon 50mg tablets
21.10.94	800

SCHEDULE "I"

DOCTOR: NGO CHAU PHAM

PATIENT: [RC]

Date	Primoteston Depot Amps 250mg/ml	Sustanon 250mg amps	Anapolon 50mg tabs	Proviron 25mg tabs	Halotestin 5mg tabs	Primobolin 5mg tabs
16.3.94	12	9				
24.4.94			100			
27.4.94				100		
26.5.94					100	
15.3.95		12	200			150

SCHEDULE "J"

DOCTOR: NGO CHAU PHAM

PATIENT: [MW]

Date	Primobolin 5mg tabs	Sustanon 250mg amps	Deca-Duraboiin 50mg/amps	Deca-Duraboiin 100mg amps
? .12.93	500	18	18	
6.2.94				
22.2.94	100	12		
26.8.94	300		18	
26.11.94		9	12	
16.1.95	100	12		

SCHEDULE "K"

DOCTOR: NGO CHAU PHAM

PATIENT: [DE]

Date	Anapolon 50mg tabs	Sustanon 250mg amps	Deca-Durabolin 50mg amps
19.12.93		3	
?2.94		3	9
23.2.94	100	12	
20.3.94	100		
5.7.94		9	
11.7.94	100		
5.8.94	100		
24.8.94		9	
7.9.94	100	9	
22.11.94	100		

SCHEDULE "L"

DOCTOR: NGO CHAU PHAM

PATIENT: [RD]

Date	Primobolan 5mg tabs	Sustanon 250mg amps	Proviron 25mg tabs	Andriol 40mg tabs	Deca-Durabolin 50mg amps
14.9.94	200	6			
4.1.95		12	50		
17.3.95		9	100	240	
11.4.95					9
19.5.95					6
30.6.95					3
7.7.95			50		

SCHEDULE "M"

DOCTOR: NGO CHAU PHAM

PATIENT: [DHL]

Date	Primoteston Depot 250mg/ml	Sustanon 250mg amps	Deca-Durobolin 50mg amps	Anapolon 50mg tabs	Primobolon 5mg tabs	Proviron 25mg tabs
15.2.94		30				
17.2.94		30				
21.12.94	12	12	12	400	200	200
21.2.95	12 (altered to 42)	12 (altered to 42)	12 (altered to 42)			
9.3.95	21	21	21			
3.4.95	12 (altered to 42)	12 (altered to 42)				
22.4.95	12	12				
26.6.95		12				

SCHEDULE "N"**DOCTOR: NGO CHAU PHAM****PATIENT: [GD]**

Date	Anapolon 50mg tabs	Sustanon 250mg amps	Halotestin 5mg tabs	Hemineurin	Other
26.11.93			100	50	
16.12.93			100	50	
7.1.94		3		50	
24.1.94				50	Serepax 30mg x 25
24.2.94				50	
17.3.94				50	
24.3.94				50	
26.3.94	100				
25.4.94			100	50	
21.5.94				50	
8.8.94				50	Serepax x 25
12.9.94				50	Serepax x 25 Panadeine Forte x 20
29.11.94		9			
7.12.94				50	
16.12.94	100				
30.12.94	100		100		

SCHEDULE "O"

Patient Name & Address	Date Disp	Drug (Quantity)
[R D], 11 Taunton Way,	30.12.94	Rivotril 2mg (200)
[StJ], 10 Premier Street,	15.8.94	Rivotril 2mg (200)
"	13.9.94	Rivotril 2mg (200)
"	12.10.94	Rivotril 2mg (200)
"	11.11.94	Rivotril 2mg (200)
"	11.1.95	Rivotril 2mg (200)
"	24.2.95	Panadeine Forte (20)
"	24.2.95	Rivotril 2mg (200)
"	10.3.95	Serepax 30mg (25)
"	12.4.94	Rivotril 2mg (200)
"	19.5.94	Rivotril 2mg (200)
"	24.6.95	Rivotril 2mg (200)
"	12.8.95	Serepax 30mg (25)
"	25.8.95	Serepax 30mg (25)
[JW], 7/2 Evans Rd,	13.8.94	Rivotril 2mg (200)
"	19.9.94	Rivotril 2mg (200)
"	12.10.94	Rivotril 2mg (200)
"	12.11.94	Rivotri 2mg (200)
"	11.1.95	Rivotril 2mg (200)
"	8.3.95	Rivotril 2mg (200)
"	24.6.95	Serepax 30mg (25)
[L A], 97 Vine St,	17.4.95	Rivotril 2mg (200)
"	16.5.95	Rivotril 2mg (200)
"	7.7.95	Rivotril 2mg (200)
"	9.10.95	Rivotril 2mg (?)
"	23.2.96	Rivotril 2mg (?)
[JK], 24 Herchard St,	14.12.93	Rivotril 2mg (200)
"	15.2.94	Rivotril 2mg (200)
"	23.12.94	Rivotril 2mg (200)

[MRA], 3 Sinnot St,	29.4.95	Rivotril 2mg (200)
"	29.4.95	Murelax 30mg (25)
"	2.6.95	Rivotril 2mg (200)
"	24.11.95	Rivotril 2m?
[JC], 14/52-54 Speed St,	18.10.94	Rivotril 2mg (?)
"	4.3.95	Rivotril 2mg (?)
"	6.3.95	Rivotri 2mg (200)
"	7.4.95	Rivotril 2m g (?)
"	8.5.95	Rivotril 2m g (?)
"	28.7.95	Rivotril 2m(?)
[DD], 3/15 Thelma St,	12.1.94	Rivotril 2mg {?}
"	13.1.95	Rivotril 2mg (?)
"	5.5.95	Rivotril 2mg (200)
[JJ], 218 Woodland Rd,	28.3.94	Rivotril 2mg (200)
"	26.9.96	Rivotril 2m (?)
[RR], 61 Hume Hwy,	28.4.95	Rivotril 2mg (200)
"	24.5.95	Rivotril 2mg (200)
"	25.7.95	Rivotril 2m9 (?)
"	9.2.96	Rivotril 2m g (?)
[DL] Haig, 5/18-20 Goulburn St,	8.2.94	Rivotril 2mg (?)
"	19.3.94	Rivotril ?mg (?)
"	29.7.94	Rivotril 0.5mg (200)
"	21.10.94	Rivotril 2m9 (●)
"	11.2.95	Rivotril 2mg (?)
"	24.6.95	Rivotril 2m9 (?)
"	26.8.95	Murelax 30mg (25)
[DB], 15/8-10 Church St,	14.9.94	Rivotril 0.5mg (200)
"	16.6.95	Rivotril 2mg (200)
"	23.9.95	Rivotril 2mg (200)
"	13.6.96	Rivotril 2mg (100)
"	15.6.96	Rivotril 2mg (200)

[AM], 21 Harden St,	22.10.94	Rivotril 2mg (200)
"	2.12.94	Rivotril 2mg (?)
[GH], 3 Beed St,	11.2.95	Rivotril 0.5mg (200)
"	9.5.95	Rivotril 2mg (?)
"	25.9.95	Rivotril 2mg (?)