

**MEDICAL TRIBUNAL OF NEW SOUTH**

**WALES CHAIRPERSON: BLANCH CJ**

**MEMBERS: PROFESSOR DORFF**

**DR MULHEARN  
DR BERGLIN**

**MONDAY 9 NOVEMBER 1998**

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**IN RE MR WILLIAM GRIFFITH McBRIDE AND THE MEDICAL  
PRACTICE ACT**

**JUDGMENT**

CHAIRPERSON: This is an application by William Griffith McBride pursuant to s 92 of the Medical Practice Act (1992) for a review of the order of the Medical Tribunal made on 29 April 1996. There was an original determination on 19 February 1993, and there was an application for review which was determined in 1996, and that application for review was dismissed.

This application, under the Act, is a fresh application which must be determined on its merits. It is a matter of determining this application on the basis of the evidence which has been tendered before this Tribunal. It is not an appeal against the earlier review in 1996, or against the determination of the complaint which was made in February 1993. If successful the result of this appeal would operate to restore the applicant to the register from the date of the determination of this review, but it would not have the effect of restoring his name retrospectively from the time his name was removed.

According to the authorities the determination of this Tribunal must be based, for the appellant to be successful, upon a finding that he has discharged the onus of proof on the balance of probabilities that he is now a fit and proper

person to practice medicine.

The principles which need to be applied are those set out in *Re Prakash* (Medical Tribunal 31 July 1992) where the following was said:

"The onus is on the applicant to satisfy the Tribunal on the balance of probabilities that he is now a fit and proper person to be registered. This onus requires him to prove that he is of good character and that he has overcome the defect in his character as shown by his previous dishonest and fraudulent conduct. It is a heavy onus as it is not easy of proof and one cannot merely rely upon the effluxion of time. In *Ex Parte Tsinolis Re Medical Practitioner's Act 1984 Weekly Notes 2 275 Walsh JA* said:

'Reformations of character and of behaviour can doubtless occur, but their occurrence is not the usual but the exceptional thing. One cannot assume that a change has occurred merely because some years have gone by, and it is not proved that anything of a discreditable kind has occurred. If a man has exhibited serious deficiencies in his standards of conduct and his attitudes it must require clear proof to show that some years later he has established himself as a different man.'

And Holmes JA said:

'One is concerned to inquire into the moral strength and quality of the applicant recognising that quality may be demonstrated by acts and motives, that is to say the behaviour and the mental and emotional situations accompanying that behaviour.'

The Tribunal should act with the greatest caution recognising a serious responsibility to the medical profession and the whole of the community in ensuring that the applicant has affirmatively established his 'worthiness and reliability for the future'. It should be satisfied there are solid and substantial grounds for a conclusion that the applicant is a person of good character who has overcome the defects that have led to his de-registration. This satisfaction should rise not only from the subjective assertions of a change of attitudes, but also from demonstrative proof of persistence in habits and integrity, uprightness, and responsibility.' (See *Evatt v New South Wales Bar Association* Court of Appeal unreported 12 April 1972 and *Court of Appeal 15 December 1981*, incorporated *Law Institute of New South Wales v Meagher* 9 CLR at 655, *Re Dr Prakash Medical Tribunal* 1990).

'In considering whether a professional man will act in the future in accordance with the standards

expected of him by his peers and the community one is concerned with character not merely reputation. Good character is essential for admission to and membership of the medical profession as it is for most professions. The Tribunal should consider what standards of right and wrong in behaviour the applicant has exhibited; the findings of the tribunal as to what led to de-registration should be accepted as showing the appreciation of his responsibilities in the past and what he is apt to do in the future.' (See Dawson v The Law Society of New South Wales Court of Appeal unreported 21 December 1989)."

It can be seen that of fundamental significance in looking at questions of registration is the question of the public interest and protection of the public. In this case the original finding of the Tribunal was that in an article published in the Australian Journal of Biological Science

...that Dr McBride deliberately made false statements in the article in relation to the experimental data, deliberately misreported the method of the experiment and included spurious data."

That finding went on to say:

"To strengthen the appearance of the experiment as a properly designed experiment in order to enhance the publishability of the article and hence provide support for his hypothesis that hyoscine may be a teratogen."

The Tribunal also said:

"Dr McBride did not simply alter the experimental data to fit the hypothesis, he invented material, data, to support his hypothesis that hyoscine was a possible teratogen. When he did this he crossed the line that separates error of judgment and moral turpitude."

In dealing with the matter in 1996 this Tribunal looked at some of the aspects and the character and reputation of Dr McBride in the intervening years. One of the matters that was looked at was what is referred to as the Langman rabbits. The Langman rabbits were rabbits upon which Dr Langman in the United States had conducted experiments

according to Dr McBride. He said that he had met Langman at a conference years earlier in Germany and had subsequently asked him to assist in the experiments he was carrying out in Australia because of a lack of laboratory facilities at the University of New South Wales. His account of communications he had with Dr Langman was to the effect that Dr Langman had provided material which Dr McBride subsequently included in his articles on the subject of hyoscine.

Before the original Tribunal and before the review Tribunal in 1996 strong conclusions were arrived at that because of the short period of time between the first communication with Dr Langman and the supposed provision of the results it was highly unlikely that Dr McBride's account was accurate.

Before the Tribunal conducting the review on the last occasion Dr McBride maintained that these communications in relation to the Langman rabbits had occurred in spite of strong findings against him in the original Tribunal in 1993. He has continued to maintain a recollection of conversations with Dr Langman before this Tribunal again in spite of the fact that the objective evidence available would appear to make the timing of the communicating of the information from Dr Langman unlikely. However, the fact that Dr McBride maintains a recollection of these communications from Langman cannot be determinative of this appeal.

In the Tribunal hearing in 1993 the Tribunal went on to consider the other aspects of the findings against Dr McBride to determine whether or not he should be reinstated. Before this Tribunal Dr McBride has frankly acknowledged his errors and the falsification of material in other regards but has steadfastly maintained a recollection of the communication from Langman. Indeed in this case it would have served his purposes much better if he had simply said he had got that wrong. The fact that he has maintained that recollection against his own interest is something that should be considered carefully.

The Tribunal which conducted the review application in 1993 came to the conclusion that the application should fail and it did so for three main reasons. The first and predominant reason was that that Tribunal

reached the conclusion Dr McBride did not have an insight in 1996 into the reasons for his de-registration. Before that Tribunal he had given evidence that he did not accept the deregistration primarily related to the falsification of research data leading to an article which was false and misleading in significant particulars. Before that Tribunal he spoke of the fact that pride and remorse clouded his judgment.

The Tribunal eventually, as to this first matter, came back to it and said in the penultimate paragraph of its determination:

"His continuing absence of insight is of primary concern to the Tribunal."

There is no doubt that finding was the major reason why the application for review of the de-registration did not succeed in 1996.

The second reason given by the Tribunal in 1996 for refusing the review was a statement in a 1994 autobiography which that Tribunal interpreted as maintaining many of the views and attitudes which he had said before the Tribunal he eschewed.

A third reason given by the Tribunal was that Dr McBride appeared to be evasive in cross-examination. However, as I have said, the primary and overwhelming reason the Tribunal rejected the application for review in 1996 was because of the lack of insight into the reasons for the de-registration. The Tribunal did go on to say at the end of its determination. It may be, and this of course is in no way binding on any Tribunal which may consider any future application, that this area of risk will be seen to diminish with the passage of time."

The hearing of this review application has focused to a significant extent then on those findings of the review hearing before this Tribunal in 1996. As I have already indicated Dr McBride has given evidence and been cross-examined in these proceedings, and he has now frankly admitted that it was his dishonesty which caused his de-registration and that question was put as baldly as that to him and he responded as baldly to it.

It has been submitted on behalf of the Health Care Complaints Commission that there was one answer he gave in the course of cross-examination which might give pause for thought. That question was one of why he would not falsify research data, and his answer was: "No one takes notice of me". It is quite clear that that answer came in the course of a series of questions and should not be taken out of context and alone. The question rather is, does Dr McBride now understand the reasons for his de-registration, and with that understanding can he now resume medical practice in such a way as the public of New South Wales can be protected?

The other criticisms which were made of him before the Tribunal in the review application in 1996 do not appear as relevant considerations before this Tribunal, so that the focus for our determination is whether or not he has come to appreciate the real reason for his de-registration, and with that knowledge can he now go forward and in the interests of the public practice medicine in this state.

Having heard the evidence and evaluated all the material including the previous determinations it is my conclusion that the answer to that question is that he can now resume practice. It is another question as to what conditions there should be on that resumption of practice.

In looking at the question of the public interest in this case there can be no doubt that Dr McBride has been a gifted medical practitioner who because of that has made and could still make a significant contribution to the public of this state. His removal from the register was because of scientific fraud. In my view there is a public interest in him resuming practice because I do accept that he now understands the reasons for the de-registration in the first place and has come to terms with the fact that his position in the community arising out of that dishonesty has changed from being a highly respected member of the community and a highly respected medical practitioner to something

significantly less than that now because of this dishonesty.

In arriving at that conclusion I am significantly assisted by the other evidence which has been tendered on his behalf and that includes a reference from Sir. Lawrence Street, which is dated 16 July 1998, where he said this:

"I have seen Dr McBride from time to time in recent years running up to the present. I can attest without qualification that his sense of dignity and self esteem have been fundamentally shaken by the failure of his 1996 application. I see no remaining trace or semblance of the character traits that led to the failure of that application. I know that in his heart of hearts he is a changed man and I admire the stoicism and humility which has ultimately led him down the course to making this fresh application - a course that in the devastation of the failure of his 1996 application he had earlier said that he would not attempt to follow. He now seeks to submit himself yet again before the seat of judgment in the context of true repentance on his part in the fervent hope that he may be forgiven for his past transgressions.

Sir Lawrence Street explained in this letter and the other letters that he has attached to that reference that he knows Dr McBride very well and has done for at least 10 years.

There is a further reference attesting to the character of Dr McBride from Dr Newlinds, another from Professor Coppleson, and another from Dr Roche, who are all leading gynaecologists and persons whose opinions have to be respected in the context of evaluating, as we are here, the character of Dr McBride and whether or not he is now a fit and proper person to practice medicine in New South Wales. Having weighed up all of that material it is my view that the answer is that Dr McBride is a fit and proper person to resume the practice of medicine.

There is however one other relevant factor and that is that he has not practiced as a medical practitioner since February 1993 except for one period of 5 weeks earlier this year. Of course when he was de-registered he ceased to practice. There was in addition a period before that when he was taken up for significant periods of time with the

preparation of the case to resist de-registration, so that there was a period between 1989 and 1993 when there were significant proceedings against him. It is difficult to ascertain precisely how much practice occurred during that time but certainly there has been none in the last five and a half years subject to the 5 weeks I earlier mentioned where he spent time at a hospital in American Samoa.

The fact that he has been away from practice for such a significant period of time is a factor which in view requires consideration by this Tribunal as to what conditions of practice should be placed upon him once there is a resumption of practice. An argument has been put that his primary wish is to go to American Samoa for at least a period of one year because of the dire need for an obstetrician and gynaecologist there. A letter from American Samoa says he will require an unrestricted license in his home country in order to practice medicine in American Samoa. The submission is made that this Tribunal ought to provide for an unrestricted license in order to allow him to do that because it is in the public interest that he provide that service to the American Samoan people. Indeed we would share the desire that the American Samoan people obtain assistance, if assistance is required, however we would not like to be seen to be donating assistance to the American Samoan people of a medical nature which we were not prepared to accept ourselves. Indeed no doubt the American Samoan government's preconditions are based upon the fact that whoever went there from Australia was accepted in Australia and the various parts of Australia as a qualified medical practitioner without any restriction.

It is, of course, to Dr McBride's credit that he has spent some time in Western Samoa and that he desires to return there, however in my view his restoration to practice should be on an appropriate basis according to the evidence that we have heard.

There has been some discussion as to conditions which may be imposed. The conditions that I propose are firstly that he not undertake medical research. If I may say that is a condition to which he agree. Secondly, that his practice of medicine be subject to supervision for such period that shall be determined by the Medical Board. Thirdly, that he not perform surgery until he satisfies the Board that he is competent to perform surgery.

Those conditions I would impose because as to the second and third he has been out of practice for a significant period. It is a matter where the Board, which is the appropriate authority to determine these matters, should satisfy itself of his capacity to work.

If, as is claimed, his ability and pre-eminence in this area is such that he can resume full practice unrestricted immediately then that factor should be able to be demonstrated to the Board quickly.

In respect of supervision there has been material tendered before the Tribunal that he can go to work for Dr Stokes in Queensland, and Dr Stokes is an obvious person who, if required, would be able to supervise or assist him if supervision or assistance is required for any such period of time.

Accordingly, I would propose that the review be allowed and that Dr McBride be re-registered with those three conditions.

PROFESSOR DORFF: I agree.

DR MULHEARN: I agree.

DR BERGLIN: I agree.

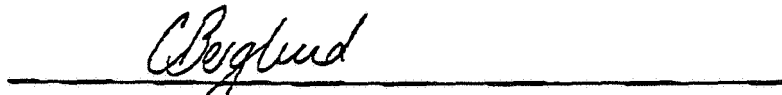
CHAIRPERSON: The determination of the Tribunal then will be as I have outlined.

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THE HON, JUSTICE R.O. BLANCH, CHAIRPERSON

DR C BERGLUND



PROF S DORSCH



DR R MULHEARN