

In the Medical Tribunal

JULY 2009

The Medical Tribunal is responsible for hearing serious complaints against doctors. The Tribunal has the power to de-register, suspend, fine and place conditions on a doctor's registration. The Tribunal is made up of a District Court judge, two doctors and a person who is not a doctor. The Health Care Complaints Commission prosecutes complaints before the Tribunal and the doctor is generally assisted by a medical defence organisation. The Medical Board appears as the opponent/respondent in Tribunal matters involving a person seeking restoration to the Register, and in matters where a practitioner is appealing a Board decision.

Note: Every effort is made to ensure accuracy and balance in these summaries, but readers are also advised to access the Board's website to read full decisions and to check the Register of Medical Practitioners to ascertain the current status of any doctor (www.nswmb.org.au). The summaries are based on decisions handed down between October 2008 and March 2009. These decisions provide valuable information to the profession and the community about standards and disciplinary processes.

Prescribing error leading to patient death

Complaint

It was alleged Dr Arthur Garry Gow, (MBBS, University of Sydney, 1977), a GP, was guilty of unsatisfactory professional conduct and/or professional conduct in relation to complaints regarding his mistaken and inappropriate prescribing of morphine tartrate ampoules for a patient's self administration. The patient injected himself with the contents of one ampoule and, as a result, died of a morphine overdose. Dr Gow was convicted of manslaughter consequent to the patient's death and received a suspended sentence of imprisonment.

Dr Gow admitted to all of the particulars of the complaints and admitted that his conduct amounted to unsatisfactory professional conduct.

Findings/orders

The Tribunal took into account *'the fact that the conduct (or series of acts) was isolated in the doctor's practice and in the consultations that the doctor had with the patient, that the conduct was not as a result of indifference nor was it calculated.'*

'In making this finding the Tribunal has taken into account that up until September 2004 the respondent had practised medicine in an unblemished way, earning the respect and admiration of his colleagues and patients.'

The Tribunal found Dr Gow guilty of professional misconduct and imposed conditions in his registration restricting his prescribing authority and in relation to his health and any resumption of medical practice.

The Tribunal also handed down a judgement in relation to a suppression order on the matter.

Date of Tribunal decision: 21 October 2008

Professional boundaries

Complaint

It was alleged Dr Marcus Andrew Stoodley (MBBS, University of Queensland, 1987), a neurosurgeon, was guilty of unsatisfactory professional conduct and/or professional conduct in relation to a complaint that he commenced a personal and then sexual relationship with a patient and failed to refer the patient to another practitioner prior to, during or after commencing the personal relationship.

Dr Stoodley admitted the particulars of the complaint. The patient did not give evidence to the Tribunal.

Findings/orders

The Tribunal noted the seriousness of the conduct, 'in particular the commencement of a sexual relationship immediately after the termination of the therapeutic relationship' led it to find the conduct was of a sufficiently serious nature to justify suspension of the practitioner from practising medicine or the removal of the practitioner's name from the Register.

The Tribunal accepted Dr Stoodley had made *'significant changes to the manner in which he interacts with patients ...and now understands the importance of keeping appropriate distance in a doctor-patient relationship'* and that he had come to understand the gravity of his conduct.

'The Tribunal is satisfied that Dr Stoodley has established to the relevant standard that he has been rehabilitated to the point where the requirement for the protection of community can be met notwithstanding that he is permitted to continue to practice.'

The Tribunal found Dr Stoodley guilty of professional misconduct and ordered he be reprimanded.

Date of Tribunal decision: 5 November 2008

Inappropriate prescribing and impairment

Complaint

It was alleged Dr Wafa Ahmed Samen (MBBS, Mosul University, 1983; AMC Certificate 1997), an obstetrician and gynaecologist, was guilty of unsatisfactory professional conduct and/or professional conduct and suffers from an impairment. The allegations were in relation to complaints that she prescribed pethidine, used emergency doctor's bag supplies, and used other doctor's prescription pads for the purposes of obtaining pethidine and with the intention of using it for self-medication. It was also alleged she failed to make or retain proper records relating to those prescriptions, failed to adequately comply with urine drug testing conditions on her registration, and misled the Pharmaceutical Services Branch about her prescribing practices and use of pethidine.

Findings/orders

The Tribunal found the doctor guilty of unsatisfactory professional conduct and professional misconduct and that she continues to suffer from an impairment, despite evidence of recovery in part from her opioid addiction. The Tribunal noted the misconduct was *'of a very serious kind'*.

It ordered Dr Samen be reprimanded, and that practice and health conditions be imposed on her registration. The Tribunal specified that certain conditions were *'critical compliance conditions'*, including a ban on prescribing Schedule 8 drugs, prescribing for self-administration, and practicing obstetrics, as well as limiting her practice hours and requiring her to undergo urine drug testing.

The Tribunal considered the imposition of these critical compliance conditions as *'fundamental to maximising Dr Samen's recovery,*

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minimising the risk of relapse and ensuring there are procedures in place to enable the Board to ascertain whether there has been any professional misconduct or breach of the conditions.'

Pursuant to the Act, the Tribunal ordered that a contravention of a critical compliance condition would result in Dr Samen's de-registration.

Date of Tribunal decision: 27 November 2008

Improper and unethical conduct

Complaint

It was alleged Dr Martyn Stuart Mendelsohn (MBBS, University of Sydney, 1983), an ear, nose and throat surgeon and plastic surgeon, was guilty of unsatisfactory professional conduct and/or professional conduct in that he had engaged in improper or unethical conduct relating to the practice or purported practice of medicine. The allegations related to complaints he engaged in oral sexual intercourse with a patient and in relation to the medical treatment he provided to the patient following the sexual event.

The patient did not give evidence at the Tribunal hearing. The doctor admitted he engaged in oral sexual intercourse with the patient and admitted to certain particulars of the complaint regarding his medical treatment.

Findings/orders

The Tribunal was satisfied that on the balance of probabilities Dr Mendelsohn engaged in oral sexual intercourse with the patient at his surgery in the course of examining and treating the patient for a nose condition; and that after administering Xylocaine to the patient he kissed the patient on the lips and touched her breast.

The Tribunal found that the practitioner in engaging in the sexual event with the patient *'breached the trust reposed in him by virtue of the doctor/patient relationship and further, breached the high standard of conduct required of medical practitioners'*.

It also found *'that the practitioner's misconduct in engaging in the sexual event with Patient A was aggravated to a very substantial degree by the practitioner performing a medical procedure on Patient A immediately following the sexual event'*.

The Tribunal de-registered Dr Mendelsohn for a minimum period of two years.

Date of Tribunal decision: 15 December 2008

Professional boundaries

Complaint

It was alleged Dr Mark Clifford Fairbrother (MBBS, University of Sydney, 1982), a GP, was guilty of unsatisfactory professional conduct and/or professional conduct in relation to complaints he engaged in a personal and sexual relationship with a current patient, resided with the patient at his home for a period of time, and failed to keep medical records in accordance with regulations.

Findings/orders

The Tribunal found that the doctor's conduct was of sufficient seriousness to amount to professional misconduct and that he had *'no insight into his conduct, no ability to see how his actions may have been viewed by the patient nor any ability to see how conducting a relationship with a current patient can cloud judgment and exploit the patient. In those circumstances, the Tribunal could have no confidence that this is an isolated incident which would not be repeated.'*

'It follows from the maintenance of the respondent's denials that he expresses no remorse for the consequences of his actions.'

The Tribunal ordered Dr Fairbrother be de-registered for a minimum of two years.

Date of Tribunal decision: 18 December 2008

Inappropriate prescribing

Complaint

It was alleged Dr Graeme John Harris (MBBS, University of Sydney, 1977), a GP, was guilty of unsatisfactory professional conduct and/or professional conduct and was not of good character in relation to complaints he inappropriately supplied/prescribed human growth hormone (HGH), human chorionic gonadotropin, androgenic/anabolic steroids, Tertroxin, Duromine, and benzodiazepines to patients.

It was also alleged he purchased more than \$700,000 worth of restricted substances, namely HgH, for supply and sale to persons. It was further alleged he failed to make and keep adequate medical records of his treatment of patients and failed to inform the Board of his court conviction for failing to comply with provisions of the Poisons and Therapeutic Goods Act.

Dr Harris had removed his name from the Register of Medical Practitioners on 18 September 2008. He did not attend the Tribunal hearing and the complaints were dealt with in his absence.

Findings/orders

The Tribunal found the doctor guilty of

professional misconduct and unsatisfactory professional conduct and that he was not of good character in relation to the complaints regarding the purchase and supply of certain drugs, inadequate record keeping, and failure to inform the Medical Board of a conviction.

'The prescription of drugs to patients almost without any medical supervision by the respondent is, in the view of the Tribunal, conduct which is antithetical to the proper conduct of a medical practitioner. Further, the Tribunal has taken into account that the respondent's conduct has enabled the diversion of legitimate drugs for an illicit use and he has profited from it... There is nothing from the respondent to explain or mitigate his conduct.'

The Tribunal ordered Dr Harris be de-registered for a minimum period of seven years.

Date of Tribunal decision: 18 December 2008

Inappropriate prescribing

Complaint

It was alleged Dr David Anthony Fox (MBBS, University of NSW, 1970), a GP, was guilty of unsatisfactory professional conduct and/or professional conduct in relation to complaints about inappropriate prescribing of drugs to 12 patients and for self-administration, his supply of human growth hormone to patients and himself, and his failure to keep adequate or appropriate medical records.

Dr Fox admitted the complaint and that his conduct amounted to professional misconduct.

Findings/orders

The Tribunal found all the complaints proven and noted the misconduct was *'of a very serious kind'*. *'While the evidence does not establish that the supply of the human growth hormone to patients was a profit making business it nevertheless was a large scale operation involving a number of patients. All of the conduct underlying the complaint is considered by the Tribunal to have been a significant departure from proper standards. Dr Fox's prescribing put at risk the health and safety of a significant number of patients. The conduct continued over a considerable length of time. All of the conduct speaks of a significant impairment in the clinical judgment of Dr Fox.'*

The Tribunal ordered Dr Fox be de-registered for a minimum period of three years.

Date of Tribunal decision: 19 December 2008

Re-registration application

Details

In March 2000 Ian Raymond Gregory (MBBS, University of NSW, 1977) removed his name

from the Register of Medical Practitioners. On 5 May 2000, the Medical Tribunal ordered he not be re-registered and that any application for review of that decision not be made for three years.

The Tribunal order was made following prosecution of complaints relating to failure to follow-up pathology results confirming a malignant melanoma, misdiagnosis and unnecessary surgical procedures, and a complaint he engaged in a sexual relationship with a patient while a professional relationship existed.

'The Tribunal considered the defects in clinical practice as found by it, when taken together, demonstrated such a gross lack of adequate skill, judgment and care in the practice of medicine as to amount to professional misconduct.'

Findings/orders

On the evidence presented in his application for restoration, the Tribunal was *'comfortably satisfied that the Applicant has not yet obtained a sufficient degree of true insight and understanding of his misconduct such that he should be allowed to resume practice, even with the type of restrictions contemplated. It follows that the Tribunal could not be satisfied that the restrictions contemplated would be sufficient to protect the public. In particular, the Tribunal remains seriously concerned by the nature of the Applicant's continuing self-exculpatory attitude.'*

The Tribunal dismissed his application for restoration to the Register and ordered he not be permitted to apply for re-registration for five years.

Date of Tribunal decision: 28 January 2009

Inappropriate and irresponsible prescribing

Complaint

It was alleged Dr Paul Joseph Ameisen (MBBS, University of NSW, 1976), a GP, inappropriately and irresponsibly prescribed certain drugs to 18 patients, including Pethidine, Alprazolam, Temazepam, Diazepam, Oxycodone, Codeine Phosphate, Clonazepam, and Flunitrazepam between November 2004 and May 2005. It was also alleged he failed to keep proper medical records in respect of those prescriptions, and that he provided signed prescriptions for the drug Nilstat to a person who was not a registered medical practitioner, for completion and later issue by that person to patients.

Dr Ameisen admitted the conduct and conceded his behaviour amounted to professional misconduct.

Findings/orders

The Tribunal found that the practitioner's conduct amounted to serious professional misconduct deserving of significant disapprobation.

'The Tribunal finds that the Respondent's misconduct in his illegal and inappropriate prescription of drugs included a willingness to knowingly dispense drugs of addiction on demand to patients, including drug dependent patients, or to patients who became drug-dependent as a result of his conduct.'

'The seriousness of his conduct was aggravated by the extent of the misprescribing and the very long period of time over which it extended.'

The Tribunal de-registered Dr Ameisen for a minimum period of 18 months.

Date of Tribunal decision: 28 January 2009

PSC referral – lack of physical or mental capacity

Details

The Medical Tribunal received a referral from a Professional Standards Committee under section 63 of the Medical Practice Act with a recommendation that GP Dr Margaret Siu-Ying Tung's (MBBS, University of Sydney, 2002) name be removed from the Register of Medical Practitioners.

Section 63 of the Act provides that a PSC can recommend suspension or de-registration on grounds of lack of physical or mental capacity.

The Tribunal Chairperson or Deputy Chairperson may then make an order in the terms recommended or may make such other order as to the suspension or registration of the person as the Chairperson or Deputy Chairperson thinks proper based on the findings of the Committee.

Orders

Pursuant to the PSC recommendation, the Tribunal ordered Dr Tung be de-registered.

Date of Tribunal decision: 4 February 2009

Breach of disciplinary order

Details

In 1997 the Medical Tribunal found Dr Gungor Olcayto (MBBS, Istanbul University, 1974) guilty of professional misconduct in relation to complaints about inappropriate prescribing of benzodiazepines, compound codeine preparations, and anabolic steroids and failure to keep adequate medical records. The Tribunal imposed conditions on his registration restricting his medical practice to an approved assistant surgeon position and removing his right to prescribe Schedule 4 and Schedule 8 substances.

In 2008 the Medical Board had reason to believe that Dr Olcayto had failed to comply with conditions imposed on his registration. On 5 September 2008 the Board referred the

matter to the Medical Tribunal under section 65 of the Medical Practice Act.

Under section 65 of the Act, the Board may refer a breach of a disciplinary order to the Tribunal. If the Tribunal finds the failure to comply with orders proved, it may exercise any of its powers.

Dr Olcayto removed his name from the Register of Medical Practitioners on 3 February 2009 and admitted the alleged breaches in writing to the Tribunal.

Findings/orders

The Medical Tribunal considered orders proposed by the parties and ordered he not be permitted to apply for re-registration and not be permitted to apply for a review of that order for a period of two years.

Date of Tribunal orders: 9 February 2009

Re-registration application

Details

In September 2000, the Medical Tribunal found Michael Jacob Bar-Mordecai (MBBS, University of NSW, 1975) guilty of professional misconduct and ordered he be de-registered and that there could be no application for a review of its de-registration order for a minimum period of seven years.

The Tribunal order was made following prosecution of complaints about his conduct and character in relation his commencing a personal and sexual relationship with a patient, obtaining financial advantages from her and administering 30 mg morphine to her and signing her death certificate.

Findings/orders

The Tribunal stated its decision on Mr Bar-Mordecai's application for restoration to the Register *'does not turn on Mr Bar-Mordecai's competence, the absence of an appropriate "return-to-practice plan" or the Tribunal's reservations about whether any such plan could be implemented.'*

'Rather, the Tribunal is not satisfied that Mr Bar-Mordecai is a person of good character within the meaning of the Act. Inter alia, a person lacks the good character to practice medicine if he or she lacks the capacity to intuitively recognise doctor/patient boundaries and appreciate the reasons for those boundaries. Only true insight can provide adequate public protection. At most, Mr Bar-Mordecai has an intellectual understanding of the boundaries and a desire to avoid transgression.'

The Tribunal dismissed the application and ordered he not be permitted to apply for re-registration for three years.

Date of Tribunal decision: 18 March 2009

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Registration appeal

Details

Dr Ashish Dhar Diwan (MBBS, Jabalpur University, 1984) is registered under section 7(1) C of the Medical Practice Act, which permits the registration of a person for the purpose of enabling them to fill a medical teaching or research position, including the following conditions:

1. to work as an academic appointment in position/s approved by the Board.
2. may not undertake any work as a medical practitioner outside the approved position/s.
3. to demonstrate satisfactory performance in accordance with the Board's requirements.

Dr Diwan unsuccessfully applied to the Medical Board to be registered as a general orthopaedic surgeon under section 7(1) E, which permits registration if the Board is satisfied that the person has specialist qualifications and experience in medicine recognised by the relevant Australian specialist college or institution, and registration is for the purpose of enabling them to practise within that specialty. Alternatively, he also unsuccessfully sought to have the current conditions on his registration removed.

He appealed these Board decisions to the Tribunal.

After lodging his appeal, Dr Diwan applied to the Royal Australasian College of Surgeons (RACS) for admission to the College. The application had not been finally determined at the time of the Tribunal proceedings.

Findings/orders

The Tribunal dismissed Dr Diwan's appeal against the Board's decision to decline his application for specialist registration under section 7(1) E, finding that the Board properly applied the legislation.

'It is accordingly unlikely to have been the intention of the legislature that the complex decision-making process of the specialist organisation, RACS, be replaced by the assessment of the NSW Medical Board itself or through its registration committee simply based on representations made by an applicant doctor.'

In view of its findings it was not necessary to determine the other legal issues raised on appeal.

Date of Tribunal decision: 20 March 2009

Assault and criminal conviction

Complaint

It was alleged Dr Rhafid Ghani Al Ramadan (MBBS, University of Basrah, 1988), a GP, was guilty of unsatisfactory professional conduct and/or professional misconduct in relation to complaints that in December 2005 without permission he had injected a patient with diazepam and/or morphine and sexually assaulted her, and that in 2006 he had been convicted of three criminal offences in relation to the same conduct.

Dr Al Ramadan has remained in custody since September 2006. On 11 December 2006 his registration ceased because he had not paid the annual registration fee.

In January 2007 Dr Al Ramadan was sentenced to a total term of imprisonment which expires on 27 December 2019, with a non-parole period which expires on 27 December 2016.

Findings/orders

The Tribunal took into account the verdict of the jury and the findings of the Judge in the criminal trial and found Dr Al Ramadan was guilty of both unsatisfactory professional conduct and professional misconduct. The Tribunal was satisfied that the circumstances of the criminal offences render him unfit in the public interest to practise medicine.

'In this case Dr Al Ramadan's actions were an abuse of the privileged position he held in our community. His actions were deliberate and he was aware that the patient had not consented. He has received a lengthy sentence of imprisonment. While he informed the Board that he was sorry and said he had made a mistake he did not admit to the conduct which is the subject of the complaints nor was there any indication that he expressed any concern for the effect on his patient.'

The Tribunal ordered Dr Al Ramadan be de-registered and that an application for review of his de-registration may not be made before two years has elapsed from the date of expiry of his total sentence for the offences committed in December 2005, regardless of whether he is released earlier to parole.

Date of Tribunal decision: 26 March 2009

Breach of conditions

Complaints

It was alleged Dr Jason Jefferson Martin (MBBS, University of Sydney, 1996), a GP, was guilty of unsatisfactory professional conduct and/or professional misconduct in relation to complaints he had breached conditions imposed on his registration and that he was impaired.

In 2003 Dr Martin became addicted to codeine and in 2004 he agreed to conditions being placed on his registration as part of the Impaired Registrants Program. It was alleged before the Tribunal that he breached conditions that required:

- he not self-administer any narcotic derivative, non-prescription compound analgesic or cold medication, which was only to be taken at the direction of and prescribed by his treating doctor.
- he attend for thrice weekly urine drug testing and have blood taken for the measurement of carbohydrate deficient transferrin levels at monthly intervals and send test results to his treating and the Board appointed doctors and the Board.

Findings/orders

The Tribunal found the most significant breaches by Dr Martin were his use of Nurofen Plus and Panadol Sinus from 20 December 2004 to 21 April 2006; and his consumption of excessive fluids on 72 occasions from 24 December 2004 to 4 June 2007 so that the urine testing could not be undertaken.

'These breaches were deliberate, occurred on many occasions and over a lengthy period. They were aggravated by the doctor's conduct in being untruthful...'

The Tribunal found Dr Martin was guilty of professional misconduct in relation to his breaches of registration conditions. It also found he suffered from an impairment.

It marked *'its strong disapproval of Dr Martin's conduct being his breach of the conditions on his registration and his misleading of the NSW Medical Board and its appointed psychiatrist; and emphasises the importance of complying with such conditions to other doctors by reprimanding Dr Martin'*.

The Tribunal ordered his registration be subject to practice and health conditions. It specified that certain conditions were 'critical compliance conditions', including restrictions on his prescribing and handling of drugs of addiction, the nature and place of medical practice, and urine drug testing requirements. Pursuant to the Medical Practice Act, contravention of any critical compliance condition would result in Dr Martin's de-registration.

Date of Tribunal decision: 26 March 2009