

# HEALTH PRACTITIONER CASE SUMMARIES

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15 OCTOBER 2012  
HPCS 2

Below is a summary of recent health practitioner cases and links to the full decisions.

## *AUSTRALIAN CAPITAL TERRITORY*

### [Medical Board Australia v Medical Practitioner V1 \(Occupational Discipline\) \[2012\] ACAT 36](#)

- **Finding of Professional Misconduct (National Law) against psychiatrist.**
- Board took **immediate action** and suspended the psychiatrist for disclosing to a patient that he was attracted to her and for excessively prescribing her with *Xanax*. Tribunal then stayed Board's immediate action decision.
- Board alleged 22 incidents of unprofessional conduct (UPC) which together amounted to professional misconduct (PM). The incidents were grouped as follows:
  - Prescribing *Xanax* without seriously evaluating the need for the patient to take the medication and without giving adequate instructions as to its likely side effects. (Patient was hospitalised for an overdose of *Xanax* with alcohol. Hospital notes indicated the main stressor was that her psychiatrist had been "sexually harassing her").
  - Disclosing his feelings to the patient and related conduct (including visiting her home, telling her he loved her, etc).
  - Failing to appropriately seek counsel of a peer in relation to his feelings for the patient.
  - Failing to take reasonable steps to ensure continuity of care after prematurely terminating therapeutic relationship.
  - Discussing the patient's situation with another person (found to be UPC not PM).
- Psychiatrist acknowledged he had been guilty of a "grave error of judgment" in the way he approached the patient for the purpose of terminating treatment after developing feelings for her.

Psychiatrist's **registration cancelled. No disqualification period was specified** (any future application for registration is a matter for the Board).

[HCCC v Bosanquet \[2012\] NSWDT 2 \(9 August 2012\)](#)

- **Findings against dentist of unsatisfactory professional conduct and professional misconduct in that he has engaged in improper or unethical conduct relating to practice (National Law).**
- In 2009 he was convicted of criminal offences, relating to three patients which, included assault and inciting the patients to commit acts of indecency. B used a false masturbation “study” to convince patients to commit the acts. In one instance, during a consultation following the removal of wisdom teeth, B took a swab from the patient’s penis with his own hands. A term of imprisonment was imposed but reduced on appeal and the sentence suspended. His good behaviour bond expired in October 2011.
- Tribunal found that B had committed serious offences that caused him to be unfit to practice. He had used his position as a healthcare professional to gain access to young men, he had abused their trust and the conduct had occurred repeatedly over time.
- Dentist was removed from the register at the end of 2009. Tribunal noted that if he was still registered then his registration would be **cancelled** and ordered that that be noted on the National Register.

**Tribunal ordered disqualification period** of 3 years six months from reapplying for registration; orders may not be review for 3 years and six months from the date of Tribunal’s decision. Tribunal also noted that if the dentist reapplied for registration after the disqualification period, that application should be placed before a Tribunal and not considered by the Board.

[Health Care Complaints Commission v Dr Jones \[2012\] NSWMT 19 \(1 August 2012\)](#)

- **Findings of unsatisfactory professional conduct and professional misconduct (under National Law) in respect of the following two complaints:**
  - improper prescription of certain drugs to 7 patients and failure to keep proper records (**Complaint 1**); &
  - writing three post-dated prescriptions for drugs of addiction or prescribed substances (to defeat conditions that were likely to be placed on his registration) (**Complaint 2**).
- A 2010 Professional Services Review resulted in conditions being imposed on Dr J’s registration including that he could not deal with certain drugs and he must complete a course on prescribing medication. Two days before the hearing he wrote post-dated scripts.
- Dr J admitted his wrongdoing in relation to both complaints but argued the second complaint did not amount to professional misconduct because he had acted for the benefit of his patients.
- Tribunal disagreed and found unsatisfactory professional conduct and professional misconduct under the National Law for both complaints.

**Doctor reprimanded, fined (\$10,000) and conditions imposed** (not to prescribe, supply or handle certain restricted drugs, only practise under supervision, appoint a mentor, submit to audit and to attend a GP for treatment).

### [HCCC v NG \[2012\] NSWPH 1 \(9 August 2012\)](#)

- **Finding of professional misconduct against pharmacist (under the National Law)**
- This proceeding involved a remittal from the Supreme Court following a partially successful appeal of the Tribunal's previous finding of professional misconduct against pharmacist, Mr. N for failing to comply with the requirements regarding dispensing drugs of addiction.
- N has previously been prosecuted in 1995 and 1998 for multiple counts of offences created by the *Poisons & Therapeutics Goods Act 1966* and its predecessor (ie. *Poisons Act 1966*). All the offences were committed within pharmaceutical practice.
- The complaint before the Tribunal arose from N's conduct which was the subject of his 2007 conviction. Namely, improperly supplying drugs of addiction, failing to record their supply and making false or misleading entries in the pharmacy records. Notably, he made or caused to be made around 2000 false entries in his dispensing records.
- N practised for a period under supervisors, tutors and mentors following an undertaking provided to the Supreme Court. However, the Tribunal found this had not resulted in significant improvement in N's "knowledge, skill, judgment or care".
- Tribunal noted N had "demonstrated a high degree of recidivism" and lacked insight. Tribunal held that N was unfit to be registered due to the seriousness of his offences and the fact that they went to the heart of practising as a pharmacist. N was considered to have brought the profession into disrepute.

**Pharmacist reprimanded and registration cancelled. Disqualified from reapplying for 18 months. Pharmacist ordered to pay costs.**

### [HCCC v Dr Small \[2012\] NSWMT 18 \(19 July 2012\)](#)

- **Finding of 'unsatisfactory professional conduct' against medical practitioner which 'was of a sufficiently serious nature to amount to professional misconduct' - National Law (NSW).**
- Dr S admitted to most allegations involving maintaining a sexual relationship with Patient A for several months and other inappropriate conduct connected with the relationship (providing gifts and free medication). Patient A was a single mother who suffered from depression and alcohol abuse.
- Tribunal noted S' remorse, commitment to treatment, qualifications and willingness to comply with conditions.

**Doctor reprimanded and conditions imposed** (supervised practice; restrictions on home visits; restrictions on days worked [5 per week] and patients per day [50]; consultation with psychiatrist and general practitioner).

### [HCCC v PHUNG \(No. 1\) \[2012\] NSWDT 1 \(10 July 2012\)](#)

- **Finding of 'unsatisfactory professional conduct' against Dentist which 'was of a sufficiently serious nature to amount to professional misconduct' - National Law (NSW).**
- Dentist P. diagnosed patient with *irreversible pulpal necrosis* and performed root canal therapy, crown and bridge work on all 28 teeth. Patient attended 55 times. Eventually all the root canal therapy had to be redone and the crowns replaced.
- Tribunal found that P failed to adequately diagnose and treat the patient; failed to undertake adequate investigations prior to treatment; and treated in excess of what was necessary for all but two teeth.

The Tribunal will consider any consequential orders in a separate hearing.

#### [HCCC v O'Connor \[2012\] NSWNMT 6 \(4 June 2012\)](#)

- **Finding of Unsatisfactory Professional Conduct - National Law (NSW) against Midwife but no finding of impairment.**
- Midwife O failed to make routine observations of a mother and child following a caesarean section, failed to correctly administer a dose of morphine and fell below the accepted competency standards.
- During a Professional Standards Committee hearing O appeared confused and her memory appeared deficient.
- O agreed to neuropsychological assessment and was found to have cognitive deficits of sufficient severity to impact on her capacity to work as a registered nurse. After treatment for hydrocephalus (water on brain), O's mental capacity improved.

**Conditions imposed:** not practising in an acute nursing environment for 24 months, nominating a nurse manager to supervise her return to work, only working part-time for the next 18 months, not working night-duty and completing an 'Assessment of Competence Program'.

#### [HCCC v Thomas Vockins Lehmann \[2012\] NSWNMPSC 2 \(31 May 2012\)](#)

- **Complaint referred to Professional Services Committee for inquiry under s 171 of National Law (NSW). PSC made finding of unsatisfactory professional conduct - National Law (NSW) against 2 nurses only.**
- Three separate complaints were made against 3 nurses that provided care to a surgical patient (during am/pm shifts). The PSC dealt with all 3 complaints in one judgement "*to ensure there is a full appreciation of the effect poor nursing standards can have*".
- Nurse T (RN) failed to record vital signs as required, failed to call a Medical Emergency Team despite the patient meeting the criteria and failed to arrange an urgent medical review of the patient.
- The following morning, Nurse V (RN) failed to undertake a full assessment of the patient, failed to supervise Nurse L (EEN) adequately, failed to provide clear instructions to Nurse L, failed to reallocate the patient to a registered nurse when her condition deteriorated and failed to provide an escort nurse when the patient was transferred.

**Professional Services Committee made the following findings:**

- Nurse L – allegations not proven and her actions did not constitute unsatisfactory professional conduct.
- Nurses T and V – Findings of **unsatisfactory professional conduct** against both. Nurses were **reprimanded** and **conditions imposed** (further education). Nurse V also restricted from working as 'nurse in charge' and must nominate a supervisor.

#### [NSW Professional Standards Committee Inquiry into Dr Joachim Fluhrer](#)

- **Professional Standards Committee (PSC) made finding of unsatisfactory professional conduct – (National Law).**
- Dr F ordered GPE (Genosense Polymorphism Essay) Testing and CCCT (Circulating Cancer Cell Test) for a cancer patient. Tests were considered experimental and not part of standard medical oncology practice in Australia. It was alleged that Dr F did

not communicate adequately with the patient's oncologist or make appropriate disclosure as to the costs of the tests.

- PSC determined that the ordering of CCCT tests amounted to **unsatisfactory professional conduct** because it evidenced a lack of judgment and care in the management of the patient that was a significant departure from the standard. However the other particulars proved (ordering of the GPE tests, lack of communication with the patient and non-disclosure of the costs) did not amount to unsatisfactory professional conduct because there was not a significant departure from the professional standards.
- Dr F was already subject to conditions imposed by the former Medical Board including informing patients he practised complementary health care, providing a policy about this and obtaining their signed acknowledgement. Further, patients for whom specific types of gene testing were proposed were to be given a statement with itemised costs, an explanation that they were not accepted practice and were to sign an acknowledgement.

Dr F **reprimanded**. PSC determined it unnecessary to reinstate or to vary the conditions that were already imposed on his registration because of the changes Dr F had made to his practice as evidenced by audits.

#### [HCCC v VU \[2012\] NSWPYT 1 \(16 August 2012\)](#)

- **Findings against physiotherapist of unsatisfactory professional conduct and professional misconduct arising out of systemic and widespread health insurance fraud (National Law). The Tribunal also made the finding that Mr Vu is not a suitable person to hold registration as a physiotherapist.**
- It was alleged that Mr Vu had between 2007 and 2008:
  - Claimed and received benefits from health insurance provided via the HICAPS system for physiotherapy services which had not been provided to the listed patients or which had not been provided at all;
  - Falsified patients records to reflect the provisions of physiotherapy services when such services had not been provided;
  - Failed to keep adequate clinical records in relation to his patients.
- Mr Vu conceded that he had engaged in unsatisfactory professional conduct and professional misconduct. In mitigation he argued that he was 'under pressure' from his patients to provide massage services and claim such services as physiotherapy. The argument was not accepted by the Tribunal.
- Mr Vu did not seek to be registered from about 2009 onwards and was not registered with the National Board at the time of the hearing.

**Mr Vu disqualified from being registered for two years from date of decision:** order that the Physiotherapy Board of Australia not on the National Register that had the Practitioner been registered, the Tribunal would have cancelled his registration and the practitioner to pay the HCCC's costs.

#### TASMANIA

#### [The Tasmanian Board of the Medical Board of Australia v Dr Paul McGinity \[2012\] TASHPT 4 \(3 July 2012\)](#)

- **Conditions imposed on medical practitioner (under *Health Practitioner Regulation Act 1996*)**

- The Tribunal received eight referrals alleging failure of Dr M to meet the standard of care expected of him. These included failure to accurately diagnose, failure to work reasonable hours, poor relationships with other colleagues and failure to keep medical records.
- Prior to the matter being heard by the Tribunal, M had voluntarily agreed to a number of conditions being imposed on his registration. Following mediation, it was agreed that M would continue to be subject to conditions but that no determination would be made regarding his professional performance or professional conduct.
- The Tribunal noted that there was a clear dispute between the parties as to whether M's conduct fell below the reasonably expected standard but for the Tribunal to make a formal determination "*would require a lengthy and costly hearing and on the face of the material before the Tribunal the outcome would be uncertain*".

**Conditions imposed on** registration including work hours (between 8 a.m. and midnight at a maximum of 10 hours a day, 60 hours a week); must refer patients with life-threatening conditions to emergency services; and must ensure that he has appropriate support from an approved practitioner and must continue with professional development.

**[The Tasmanian Board of the Medical Board of Australia -v- Dr Arnol Daware \(Ref No. 6/2011\) \[2012\] TASHPT 3 \(25 June 2012\)](#)**

- **Determination that Dr failed to exercise due care, diligence and professional competence in the practice of medicine (under the *Health Practitioner Regulation Act 1996*)**
- Dr D conceded certain failings in the exercise of his professional knowledge and judgement in his care and treatment of a 16-month-old patient 'E'.
- D did not consider the possibility that E might have a cardiac condition and wrongfully ordered treatment for asthma or pneumonia. After not responding to treatment E was transferred to the Intensive Care Unit and then to the operating table for intubation and ventilation; cardiac arrest occurred leading to cerebral hypoxia and a declaration of brain death. Intensive care support was withdrawn and E subsequently died.
- The Tribunal acknowledged that this was a diagnostically difficult case and was an isolated lapse in judgment by D. He was cautioned about the failure to consider cardiac conditions in paediatric patients and ordered to pay for four counselling sessions with a paediatric cardiologist addressing the signs, symptoms and diagnosis of paediatric cardiac conditions.

**Sanctions: Caution** (re need to consider the possibility of cardiac conditions in paediatric patients who present with respiratory problems); **Reprimand** (re communication failings); **Conditions imposed** (counselling with a paediatric cardiologist and counselling in respect of communicating with relatives of patients where there is an adverse outcome).

**VICTORIA**

**[Chiropractic Board of Australia v Hooper \[2012\] VCAT 1042](#)**

- **Tribunal rejected chiropractor's application for summary dismissal of proceedings (under s 75 of VCAT Act)**
- Onus was on H to demonstrate that the proceeding is bound to fail or is otherwise an abuse of process.
- Dr Hooper contended that the Chiropractic Board did not have jurisdiction to bring an action because the treatments to which the allegations related were not 'chiropractic' treatments. The Tribunal held that the Board's arguments were not without merit and

it would be open for the Tribunal to determine that the conduct arose from the provision of health services.

- The Tribunal held that many of the issues raised by Mr Hooper were factual matters that should be determined at a full hearing; they do not provide a basis upon which an application should be summarily dismissed or struck out.

The hearing (following a referral under s 59(2)(g) of the *Health Professions Registration Act 2005*) is listed on 8 October 2012

#### [Sherman v Medical Board of Australia \[2012\] VCAT 946 \(4 July 2012\)](#)

- **Review Jurisdiction: Board refused to register psychiatrist. Tribunal substituted a new decision ordering that S be placed on the 'general register' with conditions imposed under National Law.**
- S was first registered as a medical practitioner in 1980. His registration was cancelled in 1998 after a series of boundary violations with patients including sexual intercourse and other physical contact. He was diagnosed with bipolar disorder and depression.
- In 2000 S sought a review of the cancellation, which was refused. In 2005 he reapplied for registration and was refused. In 2010 he applied again for re-registration to the Board. This was refused and he then appealed to the Tribunal.
- The Tribunal decided to place S on the general register subject to extensive conditions. The Tribunal considered that S had gained significant insight into his illness and was remorseful of his past conduct.

**Conditions imposed:** Because S had not practised for 14 years at the time of the decision, significant retraining was required. S can only practise medicine as part of the Australian General Practice Training or until he is accepted into AGPT supervised non-training placement. S must disclose to his supervisor his history of boundary violations and bipolar disorder. He is to continue consultations with a psychiatrist who will report to the Board. S must cease practising if he becomes aware of his bipolar disorder symptoms returning.

#### [Nursing & Midwifery Board of Australia v Buckland \[2012\] VCAT 631 \(15 May 2012\)](#)

- **Findings of Professional Misconduct and Unprofessional Conduct (under HPRA Act 2005)**
- Parties filed agreed statement of facts and joint submissions on findings and determinations.
- B agreed to be the primary midwife at a homebirth but failed to consult a medical practitioner or transfer the patient to Secondary or Tertiary Care, when the patient presented with a history of epilepsy requiring medication which included a seizure at 31 weeks.
- Patient suffered a third degree perineal tear. B called an ambulance but gave false information to the Ambulance Communication Centre and when the ambulance crew arrived she failed to provide any information. When the patient was transferred to hospital, B failed to provide the patient's notes to the hospital and falsely indicated to hospital staff that she had not been involved in the birth.

Midwife was **reprimanded** and **conditions imposed** (only practise as a midwife in an approved hospital; further education and undertake clinical midwifery counselling).

#### *SOUTH AUSTRALIA*

#### [Childs v Psychology Board of Australia \[2012\] SAHPT 3 \(13 April 2012\)](#)

- **Appeal dismissed.** The Tribunal held Dr C's doctorate did not meet the required standard for endorsement as a clinical psychologist and/or educational and developmental psychologist.
- Dr C, a registered psychologist, appealed a decision of the Psychology Board of Australia refusing to endorse his registration.
- Dr C submitted that he had a research PhD with a component of applied psychology which meant that he met all professional standards and competencies for endorsement.
- The Tribunal **held** that its purpose was to consider whether Dr C met the criteria for endorsement and it was not within the Tribunal's jurisdiction to consider policy. The Tribunal determined that the coursework and clinical components completed by Dr C during the course of his doctorate did not meet the requirements.

#### WESTERN AUSTRALIA

##### Medical Board of Australia and Wild [2012] WASAT 37 (27 February 2012)

- **Findings of acting carelessly and of acting improperly (under Medical Practitioners Act 2008 (WA)).**
- The Medical Board of Australia alleged Dr W acted improperly by having an inappropriate personal relationship with a patient and that she acted carelessly by leaving the patient while he was suffering from an overdose of morphine without seeking or providing medical assistance.

**Conditions Imposed:** Including (amongst others) only providing treatment at her practice during specific hours (unless in emergencies), only maintaining one set of clinical notes for each patient and holding these notes only at her practice, and certain supervision requirements.

Dr W's registration was also **suspended** for a period of three months. The purpose of the suspension was not to protect the public from an incompetent practitioner, but to assure the public and members of the medical profession that such conduct will not be tolerated. Costs awarded against the Practitioner.

#### QUEENSLAND

##### Medical Board of Australia v Grant [2012] QCAT 285 (2 July 2012)

- **Engaging in unprofessional conduct.** Dr G engaged in conduct of a lesser standard than that which might reasonably be expected by the public or his professional peers. Dr G provided services to his patients that were excessive, unnecessary or otherwise not reasonably required for their well being.
- Action was taken by Queensland Health after their investigation of Dr G's practice of prescribing anabolic steroids and other restricted drugs, in the main, for body building rather than therapeutic purposes.
- The parties filed an agreed statement of facts and made submissions supporting a joint position on sanction. The sanction proposed involved a reprimand and the imposing of conditions.
- The Tribunal expressed its concern about the adequacy of this penalty, particularly given the sanctions that have been imposed in other cases involving steroids dispensed in excessive quantities or frequency or inappropriate combinations and determined to make different orders than those proposed.



- The Tribunal must consider the particular circumstances of the case before it and approach each case afresh. It is relevant to the function of the Tribunal, particularly in order to promote consistency of decision making within the national scheme, to take into account decisions made in comparable matters.
- As a result, the Tribunal concluded that the proposed sanction was not appropriate and proposed to make orders that achieved the following:

Dr G is **Reprimanded** with the following **Conditions**; undertake a tertiary level course in prescribing practices, undertake an approved course in managing difficult interactions with patients, not deal with the relevant drugs in any way, or seek the return of his endorsement to do so, allow (and pay for) an audit of his patient records, require him to nominate a mentor with whom he must meet monthly to reinforce sound prescribing practices and skills in managing interactions with patients and require him to provide a copy of these orders and reasons to his employer and mentor. Dr G will not be able to apply to review the conditions within 3 years. Dr G's registration is **suspended** for a period of 12 months, but that order will not take effect if, for a period of 2 years, Dr G fully complies with the conditions imposed on his registration and is not the subject of further disciplinary action).

*Several of the case summaries above have been generously provided by [Russell Kennedy's Health Law Team](#).*

#### *DISCLAIMER*

The information contained in this update is intended as general commentary and should not be regarded as legal advice.

#### **General Counsel**