THE MEDICAL TRIBUNAL
OF NEW SOUTH WALES
AT SYDNEY

Friday 22nd September 2006

No. 40008 of 2006

BETWEEN

Health Care Complaints Commission

Complainant

John Shashati

Respondent

Deputy Chair: Judge A M Ainslie-Wallace

Members: Dr D Child

Dr I Zetler

Dr C Berglund PhD

Orders and Reasons for Determination

Order:

Pursuant to *Clause 6* of *Schedule 2* to the *Medical Practice Act 1992* the Tribunal has made a Non Publication Order in respect of the names of the patients and people referred to in the proceedings.

Introduction:

The Health Care Complaints Commission (the "**HCCC**") alleges that the respondent, a medical practitioner, is guilty of unsatisfactory professional conduct and/or professional misconduct within the meaning of *sections 36 and 37* of the *Medical Practice Act, 1992*.

There are three complaints alleged against the doctor[1]:

> **1**. He has demonstrated that the knowledge, skill or judgment possessed, or care exercised by him in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience; and/or has engaged in improper or unethical conduct relating to the practice of medicine.

[1] Annexure A to these reasons

In relation to this complaint, the particulars[2] relate to the prescription of *Schedule 8* drugs of addiction to eleven people.

In relation to persons A, B and C it is alleged that the practitioner prescribed drugs in the name of that person knowing that the drugs were not for the person and for a non-therapeutic purpose improperly to divert the drugs for his own use. In addition it was alleged that person A was not a patient of the practitioner.

In relation to persons D and E, it is alleged that the practitioner prescribed without exercising responsible medical judgement, without recording the particulars of the medication as required by the regulations[3] and without making a record of the assessment and treatment of this person which led to the prescription of the drug. In relation to person E it is also alleged that the practitioner failed properly to record the receipt of 120 tablets of Endone returned to him by person E.

In relation to person F it is alleged that the practitioner prescribed Endone 5mg x 300 tables without exercising responsible medical judgment as to whether it was appropriate, in a quantity or for a purpose that does not accord with the recognised therapeutic standard of what is appropriate and without recording the particulars of the medication prescribed.

In relation to person G it is alleged that the practitioner prescribed Endone 5 mg x 20 tablets without recording the particulars of the medication prescribed.

In relation to person H it is alleged that the practitioner prescribed Endone 5mg x 240 tablets without examining person H, without exercising responsible medical judgment as to whether it was appropriate, in a quantity or for a purpose that does not accord with the recognised therapeutic standard of what is appropriate and without recording the particulars of the medication prescribed.

In relation to person I it is alleged that the practitioner prescribed Sudafed x 360 tablets without examining person I, without exercising responsible medical judgment as to whether it was appropriate, in a quantity or for a purpose that does not accord with the recognised

[2] Complete particulars are contained in Annexure A to these reasons

[3] *Poisons and Therapeutic Goods Regulation 2002 and Schedule 2 of the Medical Practice Regulation 1998*

therapeutic standard of what is appropriate and without recording the particulars of the medication prescribed.

In relation to person J it is alleged that the practitioner prescribed Sudafed x 360 tablets without examining person J, without exercising responsible medical judgment as to whether it was appropriate, in a quantity or for a purpose that does not accord with the recognised therapeutic standard of what is appropriate and without recording the particulars of the medication prescribed.

In relation to person K it is alleged that the practitioner treated and prescribed schedule 8 drugs and failed to make a record of his treatment and prescribing contrary to the requirements.

In relation to persons H, I, J and K who are members of his family, it is alleged that the practitioner inappropriately treated and prescribed drugs to them.

It is also alleged that the practitioner failed to keep a drugs register in the form required.[4]

2. That the practitioner has been guilty of unsatisfactory professional conduct and/or professional misconduct within the meaning of *sections 36 and 37* of the *Medical Practice Act, 1992* in that he has contravened a condition to which his registration is subject.

The particulars of this complaint are that the practitioner was bound at the relevant time by a condition of his right to practise that he not prescribe for self-medication and has contravened this condition.

3. That the practitioner is not of good character.

The particulars of this complaint are that he made false statements to the officers of the Pharmaceutical Services Branch, to the Medical Board Inquiry and during Reviews held by the Medical Board about using and prescribing Endone.

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[4] *Division 5 of Part 4 Poisons and Therapeutic Goods Regulation of 1994 and Poisons and Therapeutic Goods Regulation 2002*

Other than four particulars which were not admitted in complaint 1, complaints 1 and 2 were admitted by the practitioner. Further it was conceded that the practitioner's conduct comprehended by these complaints amounts to professional misconduct.

The practitioner's position before the Tribunal was that he was presently unfit to practise as a medical practitioner and did not oppose an order removing his name from the Register of Medical Practitioners. The issue before the Tribunal concerned the period of time before the practitioner could apply to be re-registered.

1 The practitioner is aged thirty-five. He graduated from Sydney University in 1996, completed his intern year at Wollongong Hospital in 1997 and remained there as a Resident Medical officer in 1998. In 1999 he worked as a Senior RMO at hospitals in the southern region of Sydney and in Coffs Harbour. Apparently he wished to become a surgeon but, after his first child was born in 2000, decided to become a general practitioner. He was accepted into the training programme for the Royal Australian College of General Practitioners and was appointed in 2001. From January 2002 until January 2003 he worked as a trainee general practitioner in two practices. He ceased practise between January and May 2003 after the birth of one of his children. In May 2006 he voluntarily ceased practise pending the outcome of this hearing.

Complaint 1 – prescription of *Schedule 8* drugs

2 Following complaints from local pharmacies and from the principal general practitioner with whom the practitioner then worked, the Pharmaceutical Services Board (the "**PSB**") investigated the practitioner's prescription of Endone and Ordine, both *Schedule 8* medications[5]. The investigation showed that in 2002 the practitioner had prescribed large amounts of Endone and some Ordine. For example, in April 2002 he prescribed 240 Endone Tablets for Person H[6], 200 Endone tablets in May 2002 for Person J and 120 tablets for Person C, 120 for Person A in June 2002, 300 tablets for Person E and 120 tablets for Person B in October 2002 and 300 tablets for Person F in January 2003. The practitioner also

[5] Report dated 15th May 2003 –part Exhibit A

[6] At the commencement of the hearing, an order was made suppressing the identities of the people and patients referred to in the Complaint. In these reasons they will be referred to by the initials ascribed to them.

prescribed Ordine for Persons A and B. The investigation revealed that the practitioner wrote prescriptions for 360 tablets of Sudafed each for person I and J.

3 The records of the particular pharmacies showed that in relation to some of those prescriptions, the practitioner collected the medication himself.

4 On 14th April 2003 the practitioner was interviewed by two members of the PSB.[7] During the interview, the practitioner agreed that some of the prescriptions written by him for Endone were collected by him and retained for his "*stock*" in his doctor's bag and were never intended for the particular person. For example, Person A was a neighbour of the practitioner and not a patient. According to a statement made by Person A, he had never seen the prescription written for him nor received any medication. The prescription [8] specified the dose and frequency of use of the drug by Person A.

5 When he referred to keeping drugs for "*stock*", the practitioner said that he would keep supplies of Endone and Ordine on hand to treat pain and persistent severe cough and would dispense the tablets one or two at a time to particular patients. He would decant a few millilitres of the Ordine from the bottle into specimen bottles and give the specimen bottle to the patient.

6 During the interview the practitioner agreed that he had collected the Endone for four of the people named in the complaint although did not agree that he had kept all of the drugs collected. He agreed collecting the drugs for Person C, Person A and Person D for whom he also prescribed and collected Ordine, however he was adamant that these people were given the drugs collected by him.

7 The PSB obtained statements from both Persons A and C who denied receiving the drugs prescribed.

8 The practitioner said that Person E collected the 300 Endone tablets prescribed for him but the practitioner asked him to give him half of the amount prescribed.

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[7] Record of interview with the practitioner dated 14th April 2003.
[8] Tab 13, Exhibit A

9 According to the statement of the local pharmacist, the practitioner collected 300 Endone tablets prescribed for Person F in January 2003 but returned them in February 2003. When the practitioner returned the drugs, he asked the pharmacist whether he was aware of an investigation of him by the PSB.

10 Persons H, I, J and K are relatives of the practitioner and he said in the interview that he would prescribe for them from time to time although he kept no note of any attendance or prescription of drug.

11 When asked about the Sudafed for Persons I and J, the practitioner said that both of these relatives were going overseas and he had been rung by the son of one of them, R, who asked the practitioner to get some Sudafed for them. The practitioner obtained the maximum amount permissible for each person, collected the drugs from a local pharmacy and gave them to R. In the interview, the practitioner said that he assumed that the two persons received the drugs. He said that each had chronic sinus problems.

12 During the interview, the practitioner said that from time to time he had written "*private*" prescriptions which would not be subject to the Pharmaceutical Benefit Scheme and also would delete a record of prescription from his work computer after the prescription had been filled.

13 Throughout the interview the practitioner maintained that he did not use the drugs himself but had been prevailed upon by his relatives to prescribe medication for them for various pains even though they were not his patients. He said that he had received little training about maintaining drugs for his doctor's bag, that he had been shown how to write prescriptions for people who were not to receive the drugs from a general practitioner who had been his mentor. He generally expressed a level of ignorance about the rules and restrictions on prescribing *Schedule 8* drugs. He said to the interviewers that he understood how his practise had fallen short of that expected of him and was very aware of the need to pay attention to the regulations.

Inquiry Conducted by the Medical Board

14 Based on the complaints and interview conducted by the PSB, an inquiry pursuant to *Section 66* of the *Medical Practice Act 1992* was held on 29 July 2003[9]. During that inquiry the practitioner was asked about the complaints and the matters raised by the PSB in the report of its investigation. According to the report of that inquiry, the practitioner adopted the same position he had during the interview with the PSB – that some prescriptions were collected by him and kept on hand in his bag, that others were collected by him but given to the patients and in relation to his relatives, that he kept no record of any attendance or prescription but said that he prescribed for them on their request.

15 He said that he did not use the drugs himself.

16 The Inquiry noted that the practitioner expressed remorse during the interview. It also noted that he said that since the PSB investigation he no longer prescribed for members of his family and he had told them that they must have their own medical practitioner. He said to the inquiry that he understood the need to diagnose the cause of pain rather than simply prescribing analgesia for it. The Inquiry concluded that the practitioner was *"naïve, inexperienced and immature in his approach to prescribing"* and determined that he should be allowed to continue to practise with conditions and with supervision.

17 Conditions were placed on the practitioner's right to practise – that he surrender his authority to handle, possess or administer *Schedule 8* and *Schedule 4D* medications, that he was to have fortnightly clinical supervision, attend Reviews conducted by the Medical Board and to attend a general practitioner for treatment.

18 Three of those conditions are particularly relevant to this hearing;

> *"3. That Dr Shashati is to work only in a group practice (group is defined as at least two practitioners) with one other practitioner always on site.*
>
> *4. That Dr Shashati obtain Board approval prior to changing the nature or place of his practice and must notify any employer, partner or associate of his registration conditions…..*
>
> *7. Shashati is not to prescribe for self medication."*

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[9] Tab 4, Exhibit A

19 In compliance with the Determination of the Board, the practitioner met with a clinical supervisor who made regular reports to the Board on the supervision. There is nothing in those reports which raises any concern about the clinical practice of the practitioner.

20 On 24th November 2004 the practitioner wrote to the Acting Health Care Complaints Commissioner and conceded that the prescriptions of large amounts of Endone to family members was inappropriate. He said;

> *"I can understand why one reviewing the complaints and prescription history would express suspicion and concern that I had a problem with self medication of drugs of addiction which in turn affected my professional behaviour –resulting in the complaints to the HCCC. ….I confirm that I did not self medicate nor did I sell the medications 'on the street'. The NSW Medical Board appears to have accepted that this is the truth at the section 66 Inquiry in considering whether or not I was a danger to the public."*

21 The practitioner also attended reviews conducted by the Medical Board and a report was prepared after each review. Each of those reports note the practitioner's assertion that he was not self-medicating and using the drugs prescribed himself. The practitioner was regarded as making satisfactory progress. In two reports[10], concerns were expressed about the practitioner's emotional condition. The report of October 2005 noted that he was anxious about the forthcoming Medical Tribunal hearing and he was advised to discuss this with his general practitioner. The report also noted that the practitioner said he was not taking any medication. In April 2006 the review panel recommended he seek professional help based on the practitioner's account of his emotional state.

22 The response of the practitioner, which was filed before the Tribunal in answer to the Complaint of the HCCC, maintained this position.

23 The Complaint was fixed for hearing before the Medical Tribunal on 6th September 2006.

24 On 31st August 2006 the practitioner made a statement in which he said that from early 2002 he had been regularly using Endone, Codeine Phosphate and Panadeine Forte and that the prescriptions, which prompted the investigation

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[10] October 2005 and April 2006

were written by him for his own use. In response, the HCCC filed an amended Complaint which alleged that the practitioner wrote prescriptions for the drugs for his own use[11], alleged breach of a condition on his right to practise and lack of good character. An amended response to the complaint was filed in court at the beginning of the hearing which admitted the particulars of Complaints 2 and 3 and most of the particulars of Complaint 1.

The practitioner's evidence

25 The statement of the practitioner and his evidence before the Tribunal was to the effect that he has suffered from depression since 1989. He said that in 1990 while still a medical student he attempted suicide by overdose of Theophylline, was admitted to hospital and discharged. In 1992 he again attempted suicide by overdose of drugs, was admitted to hospital and referred to a psychiatrist. Although he attended on the psychiatrist for three sessions, he did not continue.

26 From his school days the practitioner said he had suffered from headaches for which he took Panadeine Forte. He said that he was at first prescribed Panadeine Forte by his family doctor.

27 When he was working in hospitals he suffered from migraine and back pain. He said that in 1999 while working in a hospital, he was given two Endone tablets to help him sleep and for migraine. After that he used to ask colleagues to write prescriptions for Endone for him. When there was no friend or colleague who could prescribe, he took to prescribing for himself.

28 He also took Panadeine Forte from the late 1980s, he said not regularly, but took up to six tablets a day. When he was working in general practice, he took Panadeine Forte from the samples provided to the practice by drug company representatives.

29 The practitioner said that when he became aware that he was being investigated by the PSB, he stopped using Endone. He said that he stopped taking all drugs between January 2003 and late 2003.

[11] The original Complaint alleged that the practitioner had diverted the drugs for the use of other people.

30 In late 2003, the practitioner said that he began using Tramal. The practitioner said that this was not prescribed for him by a general practitioner but he wrote his own prescriptions either in the name of patients, family members or he used samples left in the practice. On some occasions he would write a prescription in the name of the person boarding with his family who would collect the drugs from the pharmacy and hand them to the practitioner. He said that he would write prescriptions in "*random names*" and mark the prescriptions as private so that they could be collected without the production of identification.

31 The practitioner said that from late 2003 until May 2006 he was taking Panadeine Forte and Tramal. Neither drug had been prescribed for him by a treating general practitioner.

32 In May 2006 the practitioner asked his general practitioner for anti-depressants because he was anxious and depressed and was to appear before a Medical Tribunal. Apparently the anti-depressants were not effective and the practitioner asked for a referral to a psychiatrist. Eventually the psychiatrist referred the practitioner to Dr Cassidy who admitted him to the Northside West Clinic where he had eight sessions of ECT in June 2006.

33 The admission documents for the Northside West Clinic[12] do not contain any mention of the practitioner's use of self-prescribed drugs. The practitioner admitted that when he was admitted to the Northside West Clinic he had not told Dr Cassidy that he had been using Tramal and Panadeine Forte.

34 While an inpatient of the Northside West Clinic, the practitioner was allowed home for the weekend. In his evidence about this incident, the practitioner said that he had quarrelled with his wife after which he attempted to kill himself. On the weekend of the 10 July 2006, the practitioner was admitted to Cumberland Hospital as an involuntary patient. The Cumberland Hospital notes contain an account of the incident. In those notes it said that the practitioner had threatened to kill himself, put a knife to his wife's throat and attacked a neighbour. During the practitioner's admission at Cumberland, his wife was interviewed. Her account of

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[12] Exhibit D

the episode was consistent with that in the hospital notes. The Tribunal is satisfied that this incident involved a threat to the practitioner's wife as well as himself.

35 After being released from Cumberland Hospital, the practitioner was admitted to the Sydney Clinic on 18th July 2006. He was discharged from there in August 2006.

36 He is presently being treated by a psychiatrist, Dr Lowden, for bipolar depression. In her report[13], she said that he is suffering from longstanding anxiety, depression and mood swings which he had been self-medicating with painkillers. She diagnosed him as having chronic recurrent major depression (most likely bipolar in nature) and substance abuse. Her treatment plan for him involves a number of drugs to control his mood, anti-depressants and twice weekly psychotherapy for the next 9-12 months.

37 The events of 6th July 2006 leading to the practitioner's admission as an involuntary patient when considered with his account of two earlier suicide attempt by overdose in 1990 and 1992 and long term self-medication with a variety of drugs, indicate to the Tribunal that he has had a longstanding problem which will take time to address.

38 The practitioner also admitted that he had lied repeatedly about his use of drugs and prescribing drugs for his own use. He said that he lied because he was scared. He said that he knew that what he was doing was wrong and he was scared that he would lose his licence and scared of what his family would do if they found out. During his evidence, the practitioner denied that his drug use would have impaired his judgment.

Credit

39 There were parts of the practitioner's evidence which lead the Tribunal to the view that he was not being entirely candid. For example, when he was cross-examined about the prescription of Sudafed to two of his relatives, he said that he did not

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[13] 1st September 2006 –part Ex 1

see those people on the day that he wrote the prescription but he saw them the day before. He could not remember where he had seen them – whether it was in Sydney where they lived or where he lived on the South Coast. He remembered that each was having an acute attack of sinus at the time of the prescription. He said that R had said that neither had enough medication. Almost immediately after giving that evidence, he said that it was *"likely that he had examined them the day before"* he wrote the prescription and said that he probably did not write on the day of the examination because he preferred to use a particular pharmacy near his practice which gave him a discount on the tablets. The practitioner's evidence in this regard was inconsistent and implausible.

40 This explanation is entirely different to that given to the investigators from the PSB. The practitioner said to the PSB investigators that he was asked for the Sudafed by R, attended the pharmacy, collected the twelve boxes and handed them to R. He told the investigators that he "*assumed*" his relatives received the medication. He made no mention during the interview of examining either person before writing the prescription.

41 On another occasion he was asked whether he had told his general practitioner, Dr Samali (with whom he worked in practice) that he was taking samples of Panadeine Forte from the practice. The practitioner said that he did not tell Dr Samali, however, he said that Dr Samali had given him a prescription for back pain in October 2005 and so argued that Dr Samali would have had an idea he was in pain.

42 In relation to the conditions on his right to practice, the practitioner said that he had mentioned at a Medical Board review that he had been asked to work as a surgical assistant to Dr Vijay Maniam. He agreed that he had not sought permission from the Board to vary the conditions of his practice but had nonetheless worked with Dr Maniam. When taxed about this he said that he had mentioned it twice to the Review Panel and since no one had told him that he could not do it, he considered himself free to accept that work. He had been asked by the Board to explain his work with Dr Maniam[14]. The practitioner

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[14] Exhibit E

responded that he was not advised that he needed to have permission from the board to provide surgical assistance. He also rationalised that work as being within the conditions on his practice.

43 The practitioner's explanation that since the Board did not object he was free to take the work and his view that, in any event the work with Dr Maniam was in compliance with the conditions on his registration, was considered by the Tribunal to lack credibility.

44 During the course of his cross-examination, the practitioner was asked about a note in the records of the Northside West Clinic to the effect that while still an inpatient having ECT, he discharged himself against medical advice to work as a surgical assistant to Dr Maniam. The practitioner said that he had been advised not to work but nevertheless went. He said that he did not tell Dr Maniam that he was advised not to work, later he said that he told Dr Maniam everything including that he was then undergoing a course of ECT, still later he said that he could not remember anything that happened in July 2006 and finally said that he did not ask permission from Dr Cassidy to go and work as a surgical assistant.[15]

45 Taking into account the inconsistencies and contradictions in the practitioner's evidence, the Tribunal must approach his evidence with great care before relying on it on any matter in issue and where it is not otherwise supported.

Disputed Particulars of Complaint

46 The practitioner took issue only with 4 particulars of the first complaint, particulars 7(a), 12(a), 13(a) and 14(a).

47 Particular 7(a) - *"On 28/12/02 the practitioner prescribed Endone 5 mgs by 20 tablets and Ordine x 200mls for Patient D….(a) without exercising responsible medical judgment as to whether it was appropriate to do so."*

48 Patient D was a patient at the practice where the practitioner then worked. He said that she had a Basal Cell Carcinoma of the leg and he prescribed Endone for

[15] page 52 transcript 6 September 2006

the pain. He collected it from the pharmacy himself and kept it in his consulting rooms to give to her as she needed it. He did not think it wise to let her have the whole twenty tablets prescribed as she was elderly and forgetful. He said that he gave her two tablets at a time to see how she got on. He thought he gave her two tablets every ten days. He said that he ordered and collected the Ordine in case she needed it in the future. She did not and he did not open it. It was retained by the principal general practitioner in the practice when the practitioner left.

49 In cross-examination the practitioner agreed that it was inappropriate to prescribe Ordine at a time when the patient did not need it. As to the Endone he said that did not know that it was possible to prescribe Endone in less than lots of twenty which would have allowed him to give the patient the tablets she needed rather than keeping a supply in the surgery.

50 In relation to the Ordine, the Tribunal is satisfied that it was inappropriate and lacked responsible medical judgment to prescribe it in circumstances in which the patient had no need for it. Equally, that the practitioner lacked the relevant knowledge that it was possible to prescribe only as much Endone as was then needed by the patient demonstrates a failure to exercise responsible medical judgment.

51 Particular 12(a) relates to Person H - *"On 12/4/02 the practitioner prescribed Endone 5mg x 240 tablets …(a) without examining person H"*.

52 Person H was a relative of the practitioner. He was not a patient of the practice nor, in truth, of the practitioner. According to the interview of the practitioner with the PSB[16], he wrote the prescription for Person H and collected it from the pharmacy. He said that he then gave the Endone to Person H. The practitioner could not remember whether he gave them to him in Sydney where Person H lived or on the South Coast (where the practitioner lived) nor could he remember where Person H was when he wrote the prescription. The practitioner said that Person H suffered from *"a lot of knee pains. He gets a lot of elbow pains and lower*

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[16] interview 14th April 2003, pages 12- 16, tab 5 Exhibit A

back pains. Like I'm talking disabling. Sometimes with the cold weather and stuff like that he won't be able to get up and walk about."

53 In his evidence, the practitioner said that he had examined Person H and said that *"He normally comes down to Sanctuary Point or I normally go down to Sydney. So if I was down in Sydney I would have examined him the day before, prior to prescribing the Endone, and if he had come down to Sanctuary Point I would have examined him on the same day and prescribed the medication on the same day".*

54 However, in cross-examination, the practitioner agreed that he could not recall whether he had examined Person H on the 12th April 2002. He kept no record of any examination or prescription of the medication which would assist him to recall.

55 Given the hesitation with which the Tribunal views the credibility of the practitioner and his own vague evidence about the circumstances of writing this prescription, we find that he did not examine Person H before prescribing the Endone.

56 Particulars 13(a) and 14(a) relate to the prescription of Sudafed to Persons I and J and in each - *"On 6/5/02 the practitioner prescribed Sudafed x 360 tablet….without examining the person"*.

57 Both Person I and J were relatives of the practitioner. In evidence-in-chief, the practitioner said that he had examined both of these people a number of times before. Each suffered from acute and chronic sinusitis. He said that he would have seen them either a day or two days before writing the prescription[17] and each would have been suffering an acute attack.

58 In cross-examination he agreed that he did not see either person on the day on which the prescriptions were written and that he had received a message through R that each needed more Sudafed. He agreed that he could not remember where he had seen these people whether in Sydney or where he lived and why he had not written a prescription when he had examined them. He said that if he had seen them in Sydney he would not have written the prescription then because he could get the drugs cheaper at a pharmacy near where he lived. The practitioner

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[17] transcript 6th September 2006 page 14

said that so far as he was concerned in relation to this particular, the only problem was that he did not keep a record.

59 The practitioner clearly had no recollection of when (or if) he had examined the people referred to in these particulars. He did not think that he would have examined them earlier than a day or two before he wrote the prescription. This evidence is different from that given to the investigators from the PSB.

60 The Tribunal does not accept that the practitioner examined either person at the time of the prescription. It was submitted for the practitioner that it was a trifling matter to complain that the practitioner had not seen someone on the actual day of writing the prescription. In some circumstances, that submission may have force. However given the extremely vague and contradictory evidence given by the practitioner about this aspect of the case, it could not be safely assumed that he has any recollection of examining the people referred to in the complaint, he kept no note, and in this case the complaint is not trifling.

61 The Tribunal finds particulars 7(a), 12(a), 13(a) and 14(a) of Complaint 1 made out.

Complaint 2 – that the practitioner self medicated while it was a condition of his registration that he not do so.

62 This complaint and the particulars were admitted by the practitioner.

Complaint 3 – that the practitioner is not of good character

63 The particulars of this complaint relate to the false statements made by the practitioner to the investigators from the PSB, to the NSW Medical Board in the *Section 66 Inquiry* and to the Review Interviews conducted by the Medical Board. The false statements are that he did not use Endone, had not obtained it by writing prescriptions in the names of patients who did not receive the drug, that he had not used *Schedule 8* drugs for self-medication, that he kept large amounts of Endone as "*stock*" for his doctor's bag, that 80% of the Endone in his "*stock*" was given to his family. The false statements to the Review Board were that he was

complying with the conditions on his registration, that he took no medication and did not self medicate.

64 The practitioner did not dispute the particulars. The dispute was whether they demonstrated a lack of good character.

65 The Complainant argued that the practitioner had constructed a complex, persistent web of lies around his drug taking and had continued to lie to the various investigators and Tribunals until a week before the hearing. It was argued that he had also lied about his drug use to the psychiatrist at the hospital in which he was a patient and lied to his general practitioner in not telling him about his use of Tramal and Panadeine Forte. The complainant submitted that this intricate web of lies maintained by the practitioner went beyond lying because he was scared of the consequences because he took none of the opportunities given him to admit that he was using the drugs and be assisted. (In both the interview with the officers of the PSB and the *Section 66 Inquiry* the practitioner was asked whether he was using the drugs himself. He denied it.) It was submitted that the practitioner was incapable of telling the truth and has shown a persistent lack of honesty in all of his dealings with the PSB and the Medical Board – the body which regulates his right to practise. It was argued that the practitioner has no insight into the effect his drug taking has had on his capacity to function as a medical practitioner – as shown by his leaving the hospital to work as a surgical assistant while in the throes of a course of ECT.

66 The Respondent argued that lies, even repeated lies, do not amount to lack of good character and distinguished the cases in which a finding of lack of good character had been established as having an additional dimension – such as the practitioner engaging in serious criminal conduct.

Discussion:

67 In *Ex Parte Tziniolis*[18] Walsh JA said of good character;

[18] (1966) 84 WN(NSW) 275 at 277

"..I am of the opinion, in deciding this question…the court is required to consider matters affecting the moral standards, attitudes and qualities of the applicant and not merely to consider what is his general reputation."

68 Later at page 300 Holmes JA said

"The judgment as to character must be arrived at by giving due weight to all features. Finally, the judgment must be made of the man at the time when the court is asked to consider the applications…..'Good character' is not a summation of acts alone but relates rather to the quality of the person. The quality is to be judged by acts and motives, that is to say, behaviour and mental and emotional situations accompanying that behaviour. However, character cannot always be estimated by one act or class of act. As much about a person as is known will form the evidence from which the inference of good character or not of good character is drawn."

69 In *Bannister v Walton*[19] Mahoney JA said

"The right to practise [medicine] affords to a practitioner privileges and opportunities which are not available to others. He is expected to maintain a relationship with patients who are affected by his character. The relationship is one which touches matters such as trust, confidence, confidentiality and right conduct. Clinical capacity is by no means the only consideration to which regard is to be had in determining whether a person is appropriate to practise medicine. It is necessary that the public be protected against those who, though having the appropriate skills do not have the character for the opportunities and privileges which the right to practise gives."

70 In *McBride v Walton*[20] how the question of good character should be determined was considered.

"To determine whether a finding of proven misconduct should be followed by a consequential finding that the practitioner is not of good character in the context of fitness to practise medicine, one must consider: (a) whether the misconduct can be satisfactorily explained as an error of judgment rather than a defect of character; (b) the intrinsic seriousness of the misconduct qua fitness to practise medicine; (c) whether the misconduct should be viewed as an isolated episode and hence atypical or uncharacteristic of the practitioner's normal qualities of character; (d) the motivation which may have given rise to the proven episode of misconduct; (e) the underlying qualities of character shown by previous and other misconduct; and (f) whether the practitioner's conduct post the proven episode of misconduct demonstrates the public and professional confidence may be reposed in him to uphold and observe the high standards of moral rectitude required of a medical practitioner."

71 In approaching this issue, the Tribunal is mindful that the practitioner has a long-standing drug addiction, possibly dating from his late teens and a mental illness.

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[19] NSW Court of Appeal (unreported) 15 July 1994 page 12

It is also to be born in mind that the practitioner is only thirty-five years old and has been able to practise for a handful of years before finding himself in this position. The practitioner did not rely on his drug addictions to explain his persistent lying but rather said that he lied because he knew what he was doing was wrong and he was afraid of the consequences. The Tribunal accepts the submission of the Complainant that the practitioner has limited insight into his own conduct. Tribunal is conscious of the fact that the practitioner has only in recent times been treated and medicated in a structured way.

72 Even accepting that this practitioner has had a long standing drug addiction and a mental illness for many years, the Tribunal is of the view that his persistent lying was neither atypical nor uncharacteristic behaviour but was reflective of his character. The practitioner's persistent and systematic lying is inimical to fitness to practise medicine. It could not be said that it was an isolated episode.

73 The persistent lies in the face of those who were in a position to assist the practitioner, the Medical Board, Review panels and clinical supervisor, and lies maintained up to the date of hearing do not instil confidence that he is a person in whom the public and profession could repose confidence. Certainly at present, the Tribunal could have no confidence that the practitioner was amenable to supervision nor that he could be relied upon to disclose matters which were adverse to him professionally.

74 The Tribunal is satisfied to the relevant standard [21] that the lies and deception practised by the practitioner from 2002 until 2006 are neither atypical nor uncharacteristic behaviour and finds that he is a person lacking good character.

75 The Tribunal finds that all three complaints are established.

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[20] (1993) 30 NSWLR 699

[21] *Briginshaw v Briginshaw* (1938) 60 CLR 336. That is that the Tribunal must be comfortably satisfied on the balance of probabilities but that having regard to the serious nature of the charge and the consequences, the satisfaction cannot be produced by "inexact proofs, indefinite testimony or indirect references".

Conclusion

76 The jurisdiction of the Tribunal is a protective not punitive one. The purpose of disciplinary proceedings is to maintain proper ethical and professional standards in protection of the community and also to protect the good standing and reputation of the profession. When an order for suspension or removal from practice is made, its purpose is *"from the public point of view, for the protection of those who require protection, and from the professional point of view, in order that abuse of privilege may not lead to loss of privilege."* [22]

77 The Tribunal is satisfied that in relation to all three complaints, the practitioner is guilty or professional misconduct.

78 At the conclusion of the hearing on 7th September 2006, the Tribunal made the following orders to take effect on and from 7th September 2006. They are confirmed. The Tribunal further orders that any application by the practitioner to be re-registered be made to the Medical Board in the first instance.

The orders of the Medical Tribunal are:

1. The practitioner's name be forthwith removed from the Register of Medical Practitioners.

2. The practitioner be not permitted to apply to be re-registered for a period of three years from today.

3. Any application by the practitioner to be re-registered be made to the Medical Board in the first instance.

4. The practitioner pay the costs of the Complainant

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[22] *Clyne v NSW Bar Association* (1960) 104 CLR 186 at 201-202