



The first two particulars of the complaint are that the practitioner failed to maintain a drug register despite having taken possession of quantities of drugs of addiction, contrary to clause 114 of the Poisons and Therapeutic Goods Regulation 1994; and that the practitioner contravened section 19(1) of the Health Care Liability Act 2001 by practicing as a medical practitioner without being covered by approved professional indemnity insurance during the period January 2002 to October 2002.

The Respondent has admitted both particulars.

Particulars 3 to 12 concern a person referred to as Patient A. The Complainant alleged that Patient A first became a patient of the practitioner in November 1999. The practitioner treated him in relation to pain resulting from renal colic. By the year 2000 it is claimed Patient A developed back pain and also suffered from a psychiatric condition.

Counsel for the complainant in her opening address stated that the relationship between Patient A and the practitioner began to change in late October early November 2001. Counsel stated that from that time the practitioner developed a personal relationship with Patient A.

The practitioner respondent admits that the relationship with Patient A did change at the time stated by the complainant but that the relationship was not a sexual one. The respondent states that she became pregnant as a result of artificial insemination and that the donor was Patient A.

Particulars 3, 4, and 5 of the complaint concern the prescribing of drugs of addiction to Patient A. The particulars relate to a period of 28 November 2001 through to the 18 October 2002. The respondent practitioner admits to the truth of the facts stated in particulars 3, 4 and 5.

The respondent admits that in late 2001 she inappropriately entered into a personal relationship with Patient A when she was his general practitioner. The respondent further admits that she inappropriately prescribed drugs of addiction namely morphine, pethidine and oxycodone to Patient A whilst she was in a personal relationship with him.

On legal advice the practitioner does not comment on particular 8 of the complaint. The practitioner claims privilege in that to comment on particular 8 could incriminate her in a criminal offence.

Particulars 9, 10, 11 and 12 relate to contraventions by the practitioner of the Poisons and Therapeutic Goods Act and Regulations and the Medical Practice Regulations.

The practitioner admits that she prescribed drugs of addiction to Patient A contrary to the conditions of an interim authority issued to her under section 29 of the Poisons and Therapeutic Goods Act 1966 and that she prescribed pethidine and injectable morphine, as well as, oral morphine (particular 9).

The practitioner admits particular 10 in that during the period 28 November 2001 and 18 October 2002 she contravened clause 13(1) of, and clauses 1(2)(a) to (d), 1(3), 1(4), 2(1), 2(2) and 3(2) of Schedule 2 of the Medical Practice Regulation 1998 by failing to:

- (a) record information relevant to Patient A's diagnosis and/or medical treatment; and/or
- (b) record particulars of any clinical opinion reached by the practitioner in relation to Patient A; and/or
- (c) record a plan of treatment for Patient A; and/or
- (d) record full particulars of the medication prescribed to Patient A; and/or
- (e) record information or advice given to Patient A in relation to medical treatment proposed by the practitioner in relation to Patient A; and/or
- (f) record the name of the person, being the practitioner, who treated and prescribed medication to Patient A; and/or
- (g) record sufficient and appropriate detail as to Patient A's case so as to allow another registered medical practitioner to continue the management of Patient A; and/or
- (h) clearly identify the practitioner as being the person who made entries in Patient A's medical notes.

The practitioner admits particular 11 in that she contravened clause 84(1) of the Poisons and Therapeutic Goods Regulation

1994 by prescribing drugs of addiction to Patient A during the period 28 November 2001 to 30 August 2002 (as shown in Schedule A) and failing to record the particulars of:

- (a) the name, strength and/or quantity of the drug prescribed; and/or
- (b) the maximum number of times the drug may be supplied on the prescription; and/or
- (c) the directions for use as shown on the prescription.

The practitioner admits particular 12 in that she contravened clauses 81(1) of the Poisons and Therapeutic Goods Regulation 2002 by prescribing drugs of addiction to Patient A during the period 3 September 2002 to 18 October 2002 (as shown in Schedule A) and failing to record the particulars of:

- (a) the name, strength and/or quantity of the drug prescribed; and/or
- (b) the maximum number of times the drug may be supplied on the prescription; and/or
- (c) the directions for use as shown on the prescription.

Particulars 13 and 14 of the complaint relate to a patient referred to as Patient B. Patient B was a patient of the practitioner between 18 February 2002 and 11 June 2002. The allegation in regard Patient B is that the practitioner inappropriately prescribed anabolic steroids to Patient B.

The practitioner admits that she prescribed Anabolic/Androgenic Steroids to Patient B on the date and in the quantity shown in Schedule B:

- (a) in quantities and/or for a purpose or purposes not in accordance with recognised therapeutic standards of what is appropriate in the circumstances, contrary to clause 36 of the Poisons and Therapeutic Goods Regulation 1994; and/or
- (b) without exercising responsible medical judgment as to whether it was appropriate to issue such prescriptions; and/or
- (c) when the practitioner knew or ought to have known that the drugs so prescribed were being, or were likely to be abused.

The practitioner admits that on 18 February 2002 and/or 11 June 2002 the practitioner contravened clause 13(1) of, and clauses 1(2)(a) to (c), 1(3), 1(4), 2(1), 2(2) and 3(2) of Schedule 2 to, the Medical Practice Regulation 1998 by failing to:

- (a) record information relevant to Patient B's diagnosis and/or medical treatment; and/or
- (b) record particulars of any clinical opinion reached by the practitioner in relation to Patient B; and/or
- (c) record a plan of treatment for Patient B; and/or

- (d) record information or advice given to Patient B in relation to medical treatment proposed by the practitioner in relation to Patient B; and/or
- (e) record the name of the person, being the practitioner, who treated and prescribed medication to Patient B; and/or
- (f) record sufficient and appropriate detail as to Patient B's case so as to allow another registered medical practitioner to continue the management of Patient B; and/or
- (g) clearly identify the practitioner as being the person who made entries in Patient B's medical notes.

Particulars 15, 16, 17 and 18 relate to the person referred to as Patient C.

The complainant alleges that Patient C was the flatmate of Patient A in that he became a patient of the practitioner between 17 January 2002 and 22 June 2002. The practitioner prescribed for Patient C various drugs of addiction including morphine and pethidine on amounts that were prescribed and not for clear therapeutic purposes.

The practitioner admits to the truth of particulars 15, 16, 17 and 18 of the complaint.

Particulars 19, 20 and 21 relate to the person referred to as Patient D. Patient D had been a patient of the practitioner since 1994. The Allegation of the complainant was that during a period of April 2002 to 20 June 2002 the practitioner prescribed codeine

phosphate, morphine and pethidine for the period April 2002 through to 20 June 2002.

The practitioner admits to the truth of particulars 19, 20 and 21 of the complaint.

The complainant submits that in light of the admissions in respect of the factual matters supportive of the particulars that the Tribunal would be comfortably satisfied that the actions of the practitioner constitutes unsatisfactory professional conduct and also professional misconduct. The complainant relies on the evidence of Dr Chung in support of its submission that the practitioner is guilty of professional misconduct. The complainant submits that if the Tribunal finds professional misconduct and the appropriate protective order would be deregistration.

The complainant further submits that there has been no reasonable explanation provided for the failure of the respondent to adduce evidence in respect of all the matters identified in particular 8 and that accordingly, a Jones v Dunkel inference should be made and that particular 8 be regarded as proved.

The respondent through her counsel stated that apart from particular 8 (which the respondent does not comment upon on legal advice) the Tribunal is entitled to find both unsatisfactory professional conduct and professional misconduct. Ms Katzmann, senior counsel for the respondent, stated that the question for determination by the Tribunal is the gravity of the conduct of the respondent whether or not it is necessary to protect the public by deregistering the practitioner.

The respondent, Bachelor of Medicine, Bachelor of Surgery, University of Sydney 1985 was first registered as a medical practitioner in New South Wales on the 14 December 1984.

The respondent completed her internship at Royal Canberra Hospital in the Australian Capital Territory and then worked as a resident medical officer and locum general practitioner in the Sydney metropolitan area. She states that in 1988 she spent 6 months working as a medical officer in Townsville for the Townsville Aboriginal and Islander Health Services then 12 months as a medical practitioner with the Leichhardt Woman's Health Centre in Sydney.

Between 1990 and 1992 the respondent was employed as a medical practitioner for Rockdale Immediate Health Care. In 1992 she set up her own practice as a general practitioner. She conducted her practice from premises at 100c Sydenham Road Marrickville. In 2004 the respondent conducted her practice as a general practitioner at premises 306 Victoria Road Marrickville. On 27 October 2005 she commenced locum work at Marrickville Metro Medical Centre at 34 Victoria Road Marrickville.

The complaint relates to the period of time that the respondent was carrying on practice at premises situated 100c Sydenham Road Marrickville. In June 2002 the Pharmaceutical Services Branch received information from two pharmacies voicing concerns with the prescribing by Dr Maria Bastas of morphine and pethidine for Patient A as well as concerns of her prescribing of anabolic

steroids. At that time the respondent was not known to the Pharmaceutical Services Branch. During the period 2 July 2002 and 25 July 2002 a Kim Dolan of the Pharmaceutical Services Branch visited a total of 17 pharmacies in the Marrickville, Pyrmont, Rozelle, Annandale, Guildford, Gordon and Roselands areas and made enquiries and collected computer patient profile printouts and appropriate prescriptions. On 22 October 2002 Mr Max Szwarcberg of the Pharmaceutical Services Branch made enquiries of a number of pharmacies and established that prescriptions had been presented since Kim Dolan's visit in early July 2002. Mr Szwacberg arranged for an interview with the respondent on the 17 December 2002. He revisited Dr Bastas at the surgery premises on the 20 December 2002.

As a result of both interviews Mr Szwarcberg stated in his report (exhibit F) the following:-

1. The practitioner examined the collected Schedule 8 prescriptions, including doctors bag orders and verified that they had been written by her.
2. Dr Bastas did not maintain a drug register. She stated she did not know of the requirement to do so although she did know that one must be kept in a hospital.
3. She admitted that she was unable to account for the morphine and pethidine that had come into her possession, both on her doctors bag orders and on the prescriptions written in her name.

4. When asked about withdrawal of her authority to prescribe drugs of addiction she stated that she was willing to do this because she found it difficult to say no.

Mr Szwarcberg agreed that following the visit on 17 December 2002 Dr Bastas signed a document in which she voluntarily relinquished her authority to possess, supply and prescribe drugs of addiction.

In relation to Patient A Dr Bastas stated that she was aware of the need for an authority under section 29 of the Poisons and Therapeutic Goods Act 1966 and aware that the authority she held for Patient A had lapsed and further aware that she did not comply with the conditions on the authority. She stated to officers of Pharmaceutical Services Branch that her reason for exceeding the dose was that the patient's pain levels had increased and he requested more medication and he had informed her that if the pain didn't stop he would kill himself. Dr Bastas informed the officers of the Pharmaceutical Services Branch that she did not want Patient A's death on her conscience.

In regard to Patient B Dr Bastas stated that that patient had consulted her on one occasion only. She said that she was unaware as to why she prescribed the steroids with three repeats. It was noted by Mr Szwarcberg that the prescribing/patient notes had no notation indicating the reason for prescribing.

In regard to Patient C Dr Bastas informed the Pharmaceutical Services Branch that Patient C was being treated for severe back pain and knee problem. It was noted that there were no entries for prescribing on 19/5/02, 27/5/02, 15/6/02 and 22/6/02 for pethidine 100mg x 5. Dr Bastas explained such missing entries as occurring because she had probably forgotten to enter them in the notes following house calls to Patient C.

In regard to Patient D Dr Bastas told the Pharmaceutical Services Branch officers that Patient D had moved to Bundaberg, Queensland some 6 months prior and that she had been treated for a chronic back injury. She was last seen by Dr Bastas on 20 June 2002 at which time Dr Bastas prescribed an NHS authority prescription for 60 morphine, 30mg ampoules because the patient told her that it was hard to get such drugs in Queensland. The report of Mr Szwarcberg (exhibit F) states that the patient prescribing notes do not appear to have entries for 2/6/02 for pethidine 100mg x 5 ampoules.

Dr Chung in his report of 25 November 2005 (exhibit J) that it is known by all his peers of competence and ethical conduct that maintaining a drug register is a responsibility and legal requirement of medical practitioners who administer prescribed and/or possess drugs of addiction. He states that all such responsible practitioners would observe this requirement and would consider the failure to maintain such a register as negligent of their duties and in contravention of the regulations that grant them the privilege of being able to prescribe this class of drugs. In the opinion of Dr Chung the practitioners failure to maintain a drug

register attracted his severe criticism and her conduct attracted his severe disapproval.

The failure of Dr Bastas to maintain medical indemnity insurance also attracted his severe criticism and severe disapproval.

Dr Chung was also severely critical of the failure of Dr Bastas to document a diagnosis of the patients consulting her and her conduct attracted his severe disapproval.

Dr Chung was also severely critical of the practitioner's failure to record a treatment plan of the Patient's A, B, C and D and to record treatment goals in regards the use of restricted drugs. He was also severely critical of the failure of the practitioner to document the dose of medication prescribed to each patient at each consultation and to record notes on each patient every visit.

In regard to Patient A, Dr Chung stated that the practitioners prescribing of morphine and/or pethidine to Patient A during the period 2 September 2002 to 18 October 2002 was entirely inappropriate and unacceptable conduct in regards its duration, consistency, regularity and quantity. Dr Chung noted that the practitioner issued prescriptions on 16 occasions for such drugs from 3/9/02 to 18/10/02 and he stated that her conduct in this regard attracted his severe criticism. Dr Chung further stated that the practitioner's conduct would in his opinion attract severe disapproval of his peers of good repute and conduct.

Dr Chung stated that the practitioner's prescribing of morphine to Patient A for a period exceeding 2 months without obtaining any authority from the New South Wales Health Department to prescribe that drug was entirely inappropriate and unacceptable conduct. He states that such conduct contravenes prescribing regulations is inappropriate and is unprofessional conduct.

Dr Chung considered that the practitioner's entering into a personal relationship with Patient A when she was his general practitioner was entirely inappropriate and unacceptable conduct. He also stated that the practitioners prescribing of morphine and/or pethidine and/or oxycodone to Patient A whilst being in a personal relationship with him was entirely inappropriate and unacceptable conduct. Dr Chung stated in evidence before the Tribunal that he would view both the matter of entering into an inappropriate personal relationship and prescribing inappropriately as serious. He agreed with the proposition put to him by counsel for the respondent that the reason for concern of an inappropriate personal relationship between a doctor and a patient is that such a relationship may adversely affect the welfare of the patient.

In her statement, which forms part of exhibit 1, the respondent practitioner states that she became stressed following the break up of her marriage. She states that the marriage broke down some time in 2000. At the time of the break up she was pregnant. She and her husband continued to live in the same house but slept in separate rooms. Her husband also continued to help her with the care of her son and also helped with financial matters. At the time her house and surgery was being built in Victoria Road,

Marrickville and her husband was also dealing exclusively with the builder in relation to such construction.

In about the middle of 2001 the respondent states that she found out that her husband was having an affair with a woman in Germany. The respondent realised at that stage that the marriage was well and truly over. The respondent's husband then left the home and went as the respondent understood to Germany. He returned some time in October of 2001.

Following his return from Germany the respondent and her husband were on the way to see an accountant when an argument occurred between them as a result of which the respondent left the car in which she was then travelling and returned home. She received a telephone call from Patient A that night and says that she opened herself up to him. Subsequently she states a friendship developed between them. The respondent also states that Patient A would on occasions turn up at the surgery and act as a receptionist. As at that time she did not have a receptionist in her surgery.

In her statement the respondent says that she now recognises that her friendship with Patient A completely clouded her judgment at a very vulnerable time in her life. She states that she told Patient A many times that he had to seek another doctor but that Patient A always had excuses such as that he was too weak or in too much pain and to use the words of the respondent she "didn't push the issue".

The respondent also states that she prescribed morphine for Patient A as he appeared to her to be in a lot of pain. She states that she actually argued with him at times but in the end he usually talked her in to prescribing for him. She states that Patient A insisted that nothing else worked and he was very demanding. She also states that Patient A told her that if she ever stopped prescribing for him he would take her to court and make sure that she would lose her licence to practice medicine. She states that she was afraid of him. She also states that she did not have any sexual relationship with him and always understood him to be a homosexual.

The nature of the friendship as referred to in the statement is not considered by the Tribunal to be an excuse for the conduct of the respondent in inappropriately prescribing drugs of addiction to Patient A. The Tribunal accepts that the relationship between the practitioner and Patient A was in fact far more intimate than that described by the respondent in her statement.

In her evidence before the Tribunal the respondent stated that Patient A would come and stay at her place about once a week. She said that she felt it was like a co-dependant association because he was bedridden a lot of the time and in pain and couldn't move so she felt as though she was a form of carer for him.

The respondent stated that in her discussions with Patient A she confided in him about matters personal to herself. In particular she confided in Patient A about fertility problems which she had when

she and her husband had been living together as man and wife. In her evidence before the Tribunal she stated that she recognised and that it was wrong of her to disclose personal information of such a nature to Patient A and that the crossing of the doctor/patient boundary affected her ability to treat Patient A properly.

In her evidence before the Tribunal the respondent stated that Patient A said to her that he wanted to have a child with her and offered to donate his sperm to the practitioner so that she could conceive his child. The respondent stated that she accepted the offer of Patient A and in fact became pregnant as a result of the donation of Patient A's sperm. She said she became pregnant by such artificial means in or about March of 2000 but miscarried at about 12 weeks.

The complainant has submitted that the relationship between the practitioner and Patient A was an intimate personal relationship and it could be described as a sexual relationship in the broad sense. The complainant also submits that the practitioner benefited from the relationship as she wanted a child and that the evidence before the Tribunal revealed that Patient A may have been in an extremely vulnerable state in light of his psychiatric condition and severe pain.

Dr Chung reserves his strongest and most severe criticism for the respondents conduct in relation to Patient A.

The respondent has submitted that the relationship between Patient A and the respondent could certainly be described as a close personal relationship and an inappropriate one, but not a sexual relationship. Dr Chung gave evidence that the medical board has issued guidelines prohibiting any sexual relationship between a doctor and a patient. Dr Chung further stated that an inappropriate personal relationship between a doctor and a patient is not prohibited by any guideline the matter is left to the discretion and good judgment of the particular doctor concerned.

The respondent has stated in evidence that she feels ashamed of herself in accepting the offer of Patient A and in allowing herself to become pregnant by means of a donor sperm from Patient A and says she should not have accepted the offer. She said that the relationship between herself and Patient A could best be described as bizarre in the sense that it was an artificial insemination and she felt as though Patient A depended upon her.

The respondent has submitted that in recognising that her relationship with Patient A was bizarre the respondent has shown insight into the inappropriateness of her conduct and that she has genuine remorse for her conduct. The complainant relies on the evidence of Dr Chung that aside from the respondent's actions being in contravention of regulations and rules governing her practice of her profession, the respondent's practices and conduct was unprofessional. The Tribunal certainly considers that the respondents conduct in relation to Patient A and her entering into an inappropriate personal relationship with Patient A demonstrates

a serious lack of judgment and care by the practitioner in the practice of medicine.

Dr Mayne gave evidence on behalf of the respondent. He stated that the personality of the respondent was that of a rather shy unassertive person who may have had difficulties in saying no to people and saying no to patients who might have tried to manipulate her.

On the history to Dr Mayne the respondent had had depressive episodes. She had a difficult childhood with an abusive father and at the age of 17 had consulted a psychiatrist and was prescribed antidepressant medications. Later within the context of her marriage difficulties she underwent two episodes where she took overdoses of medication requiring hospitalisations and requiring psychiatric assessment and further consultation in a psychiatric health centre.

It was the opinion of Dr Mayne that within the context of the marital breakdown and the issues that were occurring at that time with her husband he considered it was not surprising that the respondent almost certainly had another fairly severe depressive episode with the accompanying disturbances of mood and weight loss and sleep pattern and of course extraordinarily poor judgment.

Dr Mayne considered that there were sufficient stresses upon the respondent to account for the chaotic way in which she was running her practice.

The respondent had also described her conduct in relation to Patient A as bizarre which indicated to him that the respondent recognised that her behaviour was very odd and not the product of a well woman. The Dr considered that at the time of the complaints that had been made by the HCCC the respondents understanding of boundary issues between patient and doctor where “decidedly fuzzy.” Dr Mayne considered that there certainly had been a boundary violation by the respondent in relation to Patient A.

In regard to particular 8 The Tribunal allowed the respondent to claim privilege against any evidence tending to incriminate her.

The Tribunal accepts the submission of the respondent that particular 8 has not been proved to the requisite degree.

The Tribunal considers that the practitioners conduct in relation to Patient A and to which she has admitted is unsatisfactory professional conduct of a serious nature.

In relation to Patient B Dr Chung was severely critical of the respondents conduct in supplying Patient B anabolic/androgenic steroids for a purpose that did not accord with the recognised therapeutic purpose and standard of what is appropriate in the circumstances.

In her statement the respondent states that her recollection is that Patient B told her he was doing a particularly heavy job that required a certain amount of strength and that he did not have and

that he was unable to cope with the physical demands of the work. She also recollects him complaining of severe muscle fatigue and that she acceded to his request for steroids to build his muscle strength. The respondent agrees that in doing this she failed to act responsibly.

In her statement in answer to the letter from the HCCC of 9 May 2003 the respondent stated that Patient B requested anabolic steroids to help with his weight loss and general weakness. In her statement which forms part of exhibit 1 the respondent states that it was her recollection that Patient B was unable to cope with the physical demands of his work and was complaining of severe muscle fatigue.

The complainant submits that with respect to Patient B the respondent has given inconsistent accounts for the reason for prescribing anabolic steroids and that there is no evidence that the drugs were prescribed for therapeutic purposes.

The respondent has admitted that her records are appalling regarding the period the subject of the complaint. There is in fact no record as to the therapeutic reason for the prescribing of anabolic steroids to Patient B. Dr Chung considers the inadequacy of Dr Bastas medical record keeping in relation to Patient B was entirely clinically inappropriate and constituted unacceptable conduct.

In his evidence before the Tribunal Dr Chung agreed that the fact that the prescribing of the steroids occurred on one occasion only

had to be taken into account in considering the level of his criticism and that on reflection the level of his disapproval would be moderate.

Dr Chung states that the schedule of the respondents prescribing of morphine and/or oxycodone and/or pethidine to Patient C during the period 17 January 2002 to 22 June 2002 does not per se indicate an excessive use of these drugs. In her statement the respondent states that Patient C appeared to her to be in severe and acute pain both before and after knee surgery. The respondent states that Patient C told her that he was given endone in hospital and that without it he had been unable to sleep because of the pain. The respondent states that on the history which she had she decided to prescribe endone for Patient C she also states that it was her intention to prescribe the drug for a short period of time only.

Dr Chung considered that there was insufficient information to express an opinion as to the appropriateness of the respondents conduct in her prescribing of drugs to Patient C. He was of the opinion that it was unusual for injections of pethidine to be used to treat a musculo-skeletal injury and/or coronary ischaemia. Dr Chung was also of the opinion that the failure to make contemporaneous entries with respect to the medical treatment or services provided to Patient C was poor practice in that it did not meet the standards specified by Medical Practice Regulations nor was it accepted as good practice by his peers of competence. The respondent's conduct in this regard attracted his moderately severe disapproval.

Dr Chung considered that the respondents medical record keeping in relation to Patient C was just in keeping with the requirements of the Medical Practice Regulations 1998 and barely in keeping with the respect of the requirements of clause 84(1) of the Poisons and Therapeutic Goods Regulation 1994. Dr Chung considered that the level of detail in the medical records was inadequate as to the medical history, examination, diagnosis and assessment of pain level recorded with regards to the pain mechanism and pathology. His criticism of the respondent's records during the period 17 January 2002 to 22 June 2002 was moderate and in his opinion the respondent's conduct attracted his mild disapproval.

The respondent has admitted that her medical records during this period were inadequate and that her conduct in this regard showed unsatisfactory professional conduct.

In regard to Patient D Dr Chung considers that the prescribing by the respondent of codeine phosphate to Patient D during the period 12 April 2002 to 20 June 2002 may have been necessary to treat back pain. The respondent has stated that Patient D had chronic pain and had a complicated medical and psychological history. The respondent stated that she found Patient D to be a difficult patient and very hard to deal with.

Dr Chung has stated that it is his opinion that the medical records were insufficient in detail to make an adequate assessment of the respondents conduct in regard to whether the pain was such that the quantity of codeine phosphate prescribed was necessary. He

was also of the opinion that the prescribing of morphine was unexplained by the records. Dr Chung considered that the respondent's medical record of Patient D during the period 12 April 2002 to 20 June 2002 did not contain sufficient clinical detail nor explained the purpose of her treatment of the patient. Her conduct so far as keeping appropriate medical records attracted his moderate disapproval.

The respondent in her statement states that although she did not actually know that Patient D was abusing the drugs prescribed for her she accepts that there was every likelihood that she was in fact abusing the drugs. She has further stated that it was quite wrong of her to continue to treat Patient D and that she should have referred the patient elsewhere.

Dr Chung reserved his strongest and most severe criticism of the respondents conduct in relation to Patient A. He considered that her actions were in contravention of regulations and rules governing the practice of her profession and her practices were unprofessional and threatened the safe care of her patients. Dr Chung stated that when this was considered in the light of her failure to maintain proper medical indemnity insurance and when her professional conduct in regards Patients B, C and D was taken into account, "one must have very serious concerns about Dr Bastas' ethics, competence, care, concern, skill and knowledge in the practice of her profession."

The respondent has submitted that the conduct the subject of the complaint took place at a time of extreme stress and in

circumstances when she was especially vulnerable. She admits that her conduct particularly in relation to Patient A could be categorised as professional misconduct, but even if it was so categorised her conduct was not sufficiently serious in nature to justify suspension or deregistration. It was submitted that it was not necessary to protect the public by a period of suspension of the respondent or by deregistration.

Since the events the subject of the complaint the respondent has undergone treatment by Dr O'Sullivan psychiatrist. The respondent has been undergoing treatment from Dr O'Sullivan since September 2005. She has also sought the assistance of a Dr Hindmarsh as a mentor. Dr Hindmarsh is a respected general practitioner.

Since 1999 the respondent has kept up to date with continuing education programs and undertaken continuing education in the area of boundary violations. She fully understands her obligation with respect to prescribing drugs of addiction and with respect to keeping proper and adequate medical records.

On 27 October 2005 the respondent started to work on a part time basis at the Marrickville Metro Medical Centre. On 17 December 2005 the respondent commenced work at the centre on a full time basis.

In her evidence before the Tribunal the respondent stated that at the time of the events subject of the complaint she was socially isolated. At the time of her separation from her husband her

relationship with her mother and her sister were strained and she had no support from friends or fellow practitioners.

The respondent told Dr Mayne that she believed that she was threatened by Patient A by being accused of sexually abusing him and that she had turned him into a drug addict. She also considered that she might be reported as an incompetent mother. Dr Mayne considered that the respondent underwent a period of extreme emotional distress following the break up of her marriage in 2001. He considered that during the period of her stress her medical practice fell severely short of acceptable standards and that the respondent was engaged in a number of prescribing patterns, which were unacceptable. He also considered that she formed an inappropriate relationship with Patient A.

It was the opinion of Dr Mayne that the respondent is now fully aware of her mistakes and is remorseful and contrite and now fully understands the potential for harm, which she exposed her patients to at the time.

In considering the respondents "bizarre" relationship with Patient A Dr Mayne said in evidence before the Tribunal that the respondents past psychiatric history was relevant. He said that the respondent's personality was that of a rather shy unassertive person who may have had difficulties in saying no to people and saying no to patients who might have tried to manipulate her. More importantly he considered that the respondent was a person who was subject to depressive episodes on past history. Within the context of her marital break down and the issues that were

occurring at the time with her then husband Dr Mayne did not consider it surprising that the respondent almost certainly had another fairly severe depressive episode with the accompanying disturbances of mood and weight loss and sleep pattern and extraordinarily poor judgment.

Dr Mayne was of the opinion that the pressures were extreme for the respondent at the time. She had been left with two young children; she was trying to manage a practice which required her to travel a very long distance every day; she was building up a medical practice; and was in effect engaging the builder on the building site at Marrickville. Dr Mayne considered that there were sufficient stresses upon her to account for the chaotic way in which she was running her practice.

Dr Mayne was of the opinion that the respondent did not have insight as to the seriousness of her boundary violation with Patient A at the time. He also stated that he considered the respondent to now have insight as to the seriousness of that boundary violation.

In his report Dr Mayne stated that he did not consider that the respondent would pose any threat to the community if she were allowed to continue working as a general practitioner. He strongly recommended that the respondent continue with psychiatric treatment and counselling both to monitor any further tendency towards depressive episodes and to assist her with her personality vulnerabilities of shyness and lack of assertiveness. Dr Mayne was also supportive of the respondent's desire to join a group practice.

At the conclusion of the evidence and after considering the submissions of counsel for the complainant and counsel for the respondent the Tribunal stated that it was the view of the Tribunal that the misconduct of the respondent should not result in deregistration or suspension of the practitioner. The Tribunal noted that the practitioner was due to commence work in a group practice on Saturday and that it would be incumbent on the respondent to indicate that conditions would be imposed by the Tribunal on her continued registration.

The Tribunal accepts that the conduct of the practitioner was inconsistent with the proper discharge of the duties of the practitioner in the practice of medicine. The Tribunal also accepts the submission of the complainant that the purpose of any protective order is to maintain the standards of the medical profession and to maintain public confidence in the profession.

The Tribunal considers that the unsatisfactory professional conduct of the respondent was of a serious nature. In determining that such conduct does not justify suspension of the practitioner from practicing medicine or the removal of the practitioners name from the register the Tribunal has taken into account the admissions made by the practitioner; her insight now as to the serious nature of her conduct as at the time of the events the subject of the complaint; and her efforts to remedy any defects in her knowledge as to boundary violations.

The Tribunal considered that at the time of the events the subject of the complaint the practitioner suffered from an impairment. The Tribunal has also taken into account that prior to the events subject to the complaint the practitioner had not come under any adverse notice by the Health Care Complaints Commission and has not come under any adverse notice by the Commission since the complaint. The Tribunal also notes the intention of the practitioner to cease working as a solo general practitioner.

It was the recommendation of Dr Mayne, however, that the practitioner continue with psychiatric treatment and counselling both to monitor any further tendency towards depressive episodes and to assist her with her personality vulnerabilities and lack of assertiveness.

Dr Mayne also supports the intention of the practitioner to relinquish solo medical practice and to become part of a group medical practice with associated supports and opportunities for professional enhancement which such a step would provide.

The Tribunal considers that stringent conditions be placed on the respondent continuing to practice medicine in view of the serious nature of her conduct.

## **FINDINGS AND ORDERS**

1. The Tribunal finds that the practitioners particularised conduct proved amounted to professional misconduct;

2. The Tribunal reprimands Dr Bastas;

3. The Tribunal Orders that Dr Bastas attend and satisfactorily complete the “Clinical Communication Program” conducted by the Cognitive Institute, or such equivalent course as approved by the Medical Board;

- (a) such course must be completed by the end of 2007;
- (b) the completion of any such course is to be at the Respondent’s expense.

4. The Tribunal orders that the respondent consult a mentor on a monthly basis (subject to annual or other leave) for a period of 24 months from the date of the first consultation;

- (a) the Respondent must nominate and advise the Medical Board of a mentor within 28 days of these orders being made;
- (b) the mentor must be approved by the Medical Board and must forward to the Medical Board a copy of their curriculum vitae for consideration by the Medical Board;
- (c) the respondent is to provide the approved mentor with a copy of the Amended Complaint and the Medical Tribunal’s Reasons for Decision;
- (d) the approved mentor is to provide the Respondent with support and advice with respect to professional boundary issues and personal and/or medical practice issues as they arise;

- (e) the Respondent is to authorise the approved mentor reporting to the Medical Board at 3 monthly intervals with respect to the Respondent's professional practice;
- (f) the mentor must report to the Medical Board, in a form approved by the Board, at 3 monthly intervals with respect to the Respondent's professional practice;
- (g) the approved mentor must inform the Medical Board immediately if they have any concerns in relation to the Respondent's compliance with the mentoring requirements or any other condition of registration; the Respondent's clinical performance; the Respondent's health or if the mentoring relationship ceases;
- (h) in the event that the approved mentor is no longer willing or able to mentor the Respondent, the Respondent is to nominate another mentor for approval by the Medical Board within 28 days of the cessation of the original mentor relationship;
- (i) all expenses associated with the engagement of an approved mentor are to be met by the Respondent;

5. The Tribunal orders that the Respondent be subject to the supervision of a registered medical practitioner for a period of 24 months from the date of the first period of supervision:

- (a) the Respondent must nominate and advise the Medical Board of a supervisor within 28 days of these Orders being made;
- (b) the supervisor must be approved by the Medical Board and must forward to the Medical Board a copy of their curriculum vitae for consideration by the Medical Board;
- (c) the approved supervisor is to monitor and review the Respondent's clinical practice and compliance with any conditions of her registration as a medical practitioner in accordance with the Medical Board's policy on "Selection and Responsibilities of Supervisor – PCH7.1" as updated from time to time;
- (d) supervision of the Respondent is to be in accordance with "Level 2" of Medical Board's policy on the "Selection and Responsibilities of Supervisor – PCH7.1";
- (e) the Respondent is to provide the approved supervisor with a copy of the Medical Board's policy on the "Selection and Responsibilities of Supervisor – PCH7.1"; the Amended Complaint; and the Medical Tribunal's Reasons for Decision;
- (f) the Respondent and approved supervisor must meet, in person, on a weekly basis subject to absences for annual or other leave and address and discuss such issues as professional responsibilities; doctor/patient boundaries; doctor/patient communication; appropriate prescribing practices; appropriate medical records keeping practices; clinical issues; and workload;

- (g) the approved supervisor must complete a record of matters discussed with the Respondent at each weekly meeting in a format approved by the Medical Board;
- (h) the Respondent is to authorise the approved supervisor reporting to the Medical Board at 3 monthly intervals with respect to the Respondent's professional practice;
- (i) the approved supervisor must forward to the Medical Board a copy of their meeting records referred to in Order 5(h) and report to the Medical Board in a form approved by the Board on the Respondent's professional practice at 3 monthly intervals;
- (j) the approved supervisor must inform the Medical Board immediately if they have any concerns in relation to the Respondent's compliance with the supervision requirements or any other condition of registration; the Respondent's clinical performance; the Respondent's health or if the supervisory relationship ceases;
- (k) in the event that the approved supervisor is no longer willing or able to provide the supervision required by these Orders, the Respondent is to nominate another supervisor for the approval by the Medical Board within 28 days of the cessation of the original supervisory relationship;
- (l) the cost of the supervision, meetings and reports is to be met by the Respondent.

6. The Tribunal Orders that the Respondent attend bi-monthly counselling sessions with a psychiatrist for a period of 24 months from the date of the first counselling session:

- (a) the Respondent must nominate and advise the Medical Board of psychiatrist within 28 days of these Orders being made;
- (b) the psychiatrist must be approved by the Medical Board and must forward to the Board a copy of their curriculum vitae for consideration by the Medical Board;
- (c) the Respondent is to provide the approved psychiatrist with a copy of the Amended Complaint and the Medical Tribunal's Reasons for Decision;
- (d) the approved psychiatrist must report to the Medical Board, in a form approved by the Board, on the Respondent's mental well being at 3 monthly intervals;
- (e) the approved psychiatrist must inform the Medical Board immediately if they have any concerns in relation to the Respondent's mental health; if the Respondent ceases to attend the counselling sessions or the approved psychiatrist is no longer willing or able to provide the counselling sessions required by these Orders;
- (f) in the event that the approved psychiatrist is no longer willing or able to provide the counselling required by these Orders, the Respondent is to nominate another psychiatrist for approval by the Medical Board within 28 days of the cessation of the original doctor/patient relationship;
- (g) the counselling sessions and reports are to be at the Respondent's expense.

7. The Tribunal Orders that the Respondent's registration as a medical practitioner in New South Wales be subject to the following conditions:

- (a) the Respondent only practise medicine in a group general medical practice (a group having 3 or more medical practitioners);
- (b) the Respondent provide the Principal/s at the Marrickville Metro Medical Centre with a copy of the conditions on her registration as a medical practitioner within 28 days of these Orders being made;
- (c) should the Respondent seek to practise medicine in a group medical practice other than at the Marrickville Metro Medical Centre that the Respondent provide the Principal/s at that other group medical practice with a copy of the conditions on her registration as a medical practitioner prior to her commencement at that practice;
- (d) the Respondent to provide evidence, in a form that is acceptable to the Medical Board, that she has complied with Orders 7(b) and/or 7(c);
- (e) the Respondent not to engage in "house calls" or "home visits" when treating or attending to patients;
- (f) the Respondent maintain her vocational registration as a general practitioner with the Royal Australian College of General Practitioners for a minimum period of 36 months from the date these Orders are made;
- (g) the Respondent not apply to the New South Wales Health Department to revoke the Order made pursuant to clause 171(1) of the Poisons and Therapeutic Goods Regulation

2002 on 27 December 2002 prohibiting her from supplying, prescribing or possessing drugs of addiction for a period of 24 months.

8. The practitioner to attend every six months for review by the Medical Board.

9. The Medical Board may relieve Dr Bastas from compliance of such parts of the Orders and conditions of her continued registration as it considers appropriate.

10. Dr Bastas is to pay the Complainant's costs of the proceedings.

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Deputy Chairperson  
Judge A. Puckeridge QC

Member  
Emeritus Professor S. Dorsch

Member  
Dr K. Ilbery

Member  
Associate Professor A. Glass