

DCC091 JRJ-J

MEDICAL TRIBUNAL OF NEW SOUTH WALES

DEPUTY CHAIRPERSON: JUDGE PUCKERIDGE

MEMBERS: DR A SPARK
DR S TOH
MS G ETTINGER

TUESDAY 14 MARCH 2006

40029/05 - IN RE ALLADIN MATTER v HEALTH CARE COMPLAINTS COMMISSION

REASONS FOR ORDERS AND ORDERS

DEPUTY CHAIRPERSON: The applicant seeks review pursuant to s94A subs 1 of the **Medical Practice Act** of the order of the Tribunal of 3 August 2000, by which the name of the applicant was removed from the register of medical practitioners.

The applicant seeks a reinstatement order within the meaning of s94 subs 2 of the Act, subject to such conditions as the Tribunal thinks fit.

The respondent, the Health Care Complaints Commission does not oppose the application for review of the order of the Tribunal of 3 August 2000 subject to the applicant satisfying the Tribunal that his name should be restored to the Register, and subject to appropriate conditions.

In its determination this Tribunal has considered in detail the reasons for the determination of the Tribunal of 3 August 2000. That Tribunal was concerned with four complaints. The complaints were firstly, that the applicant had been guilty of unsatisfactory professional conduct and/or professional misconduct in that he had demonstrated a lack of knowledge, skilled judgment or care in the practise of medicine and had engaged in improper

and unethical conduct related to medicine. Particulars of complaint 1 related to the performance by the applicant of circumcision on children aged thirtyone days and over in his consulting room in contravention of a condition to which his registration was then subject.

Complaint 2 was in similar terms to complaint 1. Particulars in relation to complaint 2 stated that in performing a circumcision on child M on 31 May 1997 the practitioner failed to provide an adequate dose of analgesia, or anaesthetic, removed an excessive amount of outer layer of the foreskin, failed to remove part of the inner layer of the foreskin, failed to effect haemostasis and failed to provide adequate post-operative care. Further particulars in relation to the second complaint were that in performing a circumcision on child O on 6 September 1997 the practitioner failed to provide an adequate dose of analgesia or anaesthetic, removed an excessive amount of the outer layer of the foreskin and failed to remove part of the inner layer of the foreskin.

Complaint 3 was in similar terms to complaints 1 and 2. The particulars stated in relation to complaint 3 that the applicant had provided false and misleading information in an interview with a Review Panel appointed by the Medical Board to monitor compliance conditions on his registration, by stating that he had restricted the carrying out of circumcision in his rooms to infants below the age of one month. The particulars of complaint 3 further stated that on 13 August 1997 the applicant had provided false and misleading information in an interview

with a Review Panel appointed by the Medical Board to monitor compliance with conditions on his registration by stating that he no longer performed circumcision on children over the age of one month in his rooms, and that such procedures were being performed in a surgical day centre.

Complaint 4; the particulars of complaint 4 referred to the applicant performing elective surgery, namely circumcision, on infants which were identified without professional assistance, in breach of condition 3 of the registration.

Complaint 5 and 6 were two further complaints in which it was alleged that the applicant falsified his medical records in that he recorded that a David Lee was assisting him, when in fact David Lee was not assisting him.

Complaint 6 was an allegation of breach of the Act in that the applicant performed elective procedures in his surgery on eleven occasions since March 1996 in addition to the circumcision, the subject of complaint 4, without professional assistance, in breach of condition 3 of his registration.

All the complaints and particulars were found proved by the Tribunal on 3 August 2003.

In relation to complaint 4, and complaint 5, the Tribunal in its reasons for determination stated that the practitioner had falsified his records as to the presence of Mr Lee as an assistant and stated that this was gross professional misconduct. The Tribunal found that the

applicant was guilty of professional misconduct.

The Tribunal has taken into account the reasons for the determination of the Tribunal of 3 August 2000, and in particular the finding of the Tribunal that on any review this Tribunal would have to be satisfied and convinced that the applicant has overcome the defect in his character which has been evidenced by his unethical and unprofessional conduct.

As the Tribunal stated its reasons for determination on 3 August 2000 the length of time required by the applicant to undergo such rehabilitation of his character is unpredictable. That Tribunal considered that it would be pointless for the applicant to make any application under three years.

This is the first application that has been made by the applicant since the determination on 3 August 2000.

The applicant in evidence before the Tribunal has stated that he is now aware and has insight into the defect in his character as identified by the Tribunal on 3 August 2000 and that he is now a changed man. As was stated by Walsh JA in *exparte Tziniolis* 1966 67SR New South Wales 448:

"If a man has exhibited serious deficiency in his standards of conduct and his attitude it must require clear proof to show that some years later he has established himself as a different man."

This Tribunal is concerned with whether the applicant has objectively established himself as a different man. In his statement of 29 July 2005 the applicant has indicated the activities which he has undertaken since he was

de-registered. In relation to his medical skills he has stated that he has kept up to date by reading medical journals and has also participated in a College of Psychology meeting in December 2002 and interactive online medical education. He has also worked in a number of capacities since his de-registration. He has been a night porter at the Town and Country Comfort Inn at South Strathfield. He has also attended a number of courses in relation to accounting. He states that he has had conferred upon him an Advanced Diploma of Accounting from the Australian College of Technology and has also completed a course in stress management, clinical hypnosis, counselling and relaxation. He has completed a taxi-driving training course. And he has also been a resident in China for a period between September 2002 until May 2003 where he was involved in the teaching of English language programs to adult learners.

The Tribunal has been particularly concerned as to whether or not the applicant has by virtue of his experiences since de-registration and his acknowledgment of the misleading by him of the Tribunal of 3 August 2000, established himself as a different man.

On the evidence before the Tribunal, the Tribunal is satisfied to the requisite degree of proof that the applicant has a genuine contrition for his actions and his conduct, the subject of the complaints, which were determined by the Tribunal on 3 August 2000.

The Tribunal also accepts the evidence of Dr Cheung.

Having reviewed all the evidence the Tribunal is

satisfied that there has been a change in attitude by the applicant.

Dr Cheung was satisfied on his consultations which he referred to in his report dated 26 January 2005 that there had been a change in attitude by the applicant. In a consultation which Dr Cheung referred to in his report, a consultation referred to on page 8 of this report on 21 September 2004, Dr Cheung stated that his impression was that at that time he had learned a lot and that his attitude was significantly informed by his experiences not only from the processes resulting from his problems with the Medical Act but also from his life after deregistration.

Dr Cheung who gave evidence before the Tribunal on 3 August 2000 and was severely critical of the applicant's conduct in his report dated 26 January 2005 stated that it was his opinion that his immediate acceptance of the need to engage in alternate occupation showed an accepting attitude and an adjustment to his changed circumstances and needs. He further stated that in his opinion his advancement in his work activities he entered into whilst deregistered suggested that he was capable, conscientious and responsible.

In that report Dr Cheung also referred to a statement which was made by the applicant during one of his consultations, when he said that his motivation in seeking to be restored to the list of medical practitioners was that of regaining face. Dr Cheung stated that such motivation was a positive prognostic indicator as it

required the applicant to aspire to regain and to retain the respect of the community and his professional peers. In his report Dr Cheung stated that such a motivation would require the applicant to live up to a high standard of conduct and ethics and that given he was now informed as to what was required of him it could be hoped that he would be motivated to adhere to the high standards of professional conduct and ethics.

Whilst that was the hope of Dr Cheung, the Court in view of the findings of the Tribunal of 3 August 2000 has to be satisfied that the applicant would abide by any conditions imposed on his registration. And in particular, has overcome any defect in his character which would seek to conceal his non-fulfilment of any conditions of his registration.

Having viewed all the evidence as stated before, this Tribunal is satisfied to the requisite degree that the applicant has overcome the defect in his character as identified by the Tribunal of 3 August 2000, and that it is appropriate that his name be restored to the list of medical practitioners.

The Tribunal takes note of the fact that the applicant seeks to practise in a general practise situation and does not seek to carry out surgical procedures other than procedures of a non-elective type.

The Tribunal considers, however, that it is appropriate that the applicant not perform any surgical procedures as at this time. The Tribunal has considered the conditions proposed by the respondent.

Ms Eastman, Mr Birch, the Tribunal has considered those proposed conditions. We are unhappy with some, happy with others, and this is what we considered, and I just raise these with you for consideration as at this stage, and for your comments in relation to same.

LUNCHEON ADJOURNMENT

We have those conditions, which were received by us and the Tribunal does not want to change any of those conditions. Mr Birch, have you anything to put in?

BIRCH: No we have nothing to add your Honour. We're content with the way they have now been phrased.

DEPUTY CHAIRPERSON: Thank you very much.

The orders of the Tribunal are as follows:

1. The Tribunal orders that the name of Aladdin Matter be reinstated to the Register of Medical Practitioners kept under the **Medical Practise Act**.
2. That his registration be subject to the conditions which will be annexed to the duly engrossed reasons for determination.
3. That each party pay his or its costs of the application.

In view of the fact that the conditions, although annexed to the reasons for determination, or in the orders, and the possibility that same may be lost I will read those conditions onto the record. Those conditions are:

1. The applicant is not to undertake any surgical procedures.
2. The applicant to adhere to the current standards for general practise of the Royal Australian College of General Practitioners for the performance of procedures in his consulting

room.

3. The applicant is to work only in a position approved by the New South Wales Medical Board for period of two years.

3(a) The applicant to commence practise on the basis that his work hours shall not exceed thirty hours per week and this shall continue until the first review and shall continue thereafter if required by the Board for such period as the Board may require.

4. The applicant is not to undertake solo general practise work for a minimum of two years or for such period as the applicant is required to undertake supervised medical practise in accordance with clause 6 to 9 below.

5. The applicant is to provide a copy of his employment conditions to all practitioners with whom he is associating in any medical practise within seven days of commencing employment.

6. The applicant is to be subject to supervision by registered practitioner for a minimum period of two years.

7. The applicant is to nominate a supervisor to be approved by the Board prior to the commencement of practise to monitor and review his clinical practise and his compliance with conditions in accordance with level 2 supervision of the Board's guidelines. The

approved supervisor is to be provided with a copy of the guidelines for supervision, a copy of this Medical Tribunal's decision, and a copy of the Medical Tribunal's decision of 3 August 2000.

8. The cost of the supervision and any reports is to be borne by the applicant. The applicant and the supervisor are to:

- (a) Meet on a weekly basis in person.
- (b) At each meeting a record of matters discussed is required to be completed and included in the monthly supervisor's report.
- (c) The supervisor is required to provide to the Board, initially on a monthly basis, a report in a format approved by the Board.
- (d) The supervisor is required to inform the Board immediately if there is any concern in relation to the applicant's compliance with the supervision requirements, compliance with any other conditions of registration, clinical performance and health or if the supervisor relationship ceases. The applicant is to authorise the supervisor to provide such information to the Board.

The Board may extend a period of supervised practise for such period as the Board considers necessary. If at the end of supervised practise the Board determines that the applicant has not complied with this or other conditions of his registration; and/or the Board is not

satisfied with the level of his clinical performance and/or the period of supervision has not been sufficiently continuous.

9. In the event that the supervisor is no longer willing or able to provide the supervision required by this order another practitioner is to be nominated by the applicant for approval by the Board within one month of the cessation of supervision by the applicant's previous supervisor.

10. The applicant is to notify the Board of the name and professional address of a registered medical practitioner who has agreed to act as his professional mentor within fourteen days of commencement of clinical practise.

11. The nature and frequency of the contact between the applicant and the mentor is to be determined by the mentor in accordance with the Board's guidelines for mentors. The mentor is to be provided with a copy of the guidelines for mentors, a copy of this Medical Tribunal's decision and a copy of the Medical Tribunal decision of 3 August 2000.

12(a) The applicant is to consult with a Board approved counsellor at intervals approved by the Board and counsellor.

12(b) The counsellor is to report any concerns he or she has with the applicant to the Board.

12(c) The applicant shall authorise the counsellor to provide such reports to the Board.

13. The applicant is to submit to an audit of his medical practise by a person or persons nominated by the Board within three months from his return to clinical practise, and subsequently as required by the Board. The auditor is requested to examine all aspects of the applicant's practise and to prepare a report to the Board, who will act upon the result of the report. The applicant is to authorise the said person or persons to prepare a report on his, her, or their findings. The applicant is to meet all costs associated with the audit any subsequent reports.

14. In accordance with section 93, the appropriate review body is the Board. These conditions to be reviewed every six months for a minimum period of two years.

That, as I said, will be annexure A, and I write it up the top and I initial it and date it today's date which is 14 March 2006.

I have done that, Mr Birch, for two reasons, (a) the transcript, the record of judgment when it arrives will of course have to be identified and checked, and annexure A will form part of the orders. But it is important that the applicant is aware of the conditions of employment. Do you have a copy of same as the orders date from today's

date, in order that he might refer such copies to any future employer?

BIRCH: I have a copy your Honour, and I'll be able to provide that to the applicant, and I have already discussed with him the importance of him having that in his possession at all times so he can refer to it.

DEPUTY CHAIRPERSON: If the Court attendant could just have two copies of this with the initialled annexure prepared, and one copy of that so that it could be handed to any future employer whilst we are waiting for the judgment to come through and check.

BIRCH: Yes your Honour.

DEPUTY CHAIRPERSON: Yes, thank you Ms Eastman and Mr Birch. The attendant when he returns can give you a copy of those initialled conditions, and the original, in red, will remain with the Tribunal file.

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