

## IN THE MEDICAL TRIBUNAL OF NEW SOUTH WALES

DEPUTY CHAIRPERSON: Judge R.H. Solomon

MEMBERS: Dr. D. Semmonds  
Dr. K. Edwards  
Dr. M. Gleeson

File No 40039/05

Date: 30 March 2006

### IN THE MATTER OF

DR. Y

### REASONS FOR DETERMINATION

**Pursuant to Clause 6 of Schedule 2 to the Medical Practice Act 1992 the Tribunal orders that there be No Publication of the name of Dr. Y or any material capable of identifying him.**

#### **Introduction**

This is an application by Dr. Y ("the Applicant") made pursuant to S. 92 of the Medical Practice Act 1992 for a review of the orders of a Professional Standards Committee made on 31 October 2001 which, inter alia, placed conditions upon the Applicant's registration. The conditions imposed were as follows:

- (1) That the Applicant's registration is to be subject to the condition that he not undertake microsurgery;
- (2) That the Applicant is to be assessed by an ophthalmologist approved by the New South Wales Medical Board at intervals determined by the ophthalmologist and reports forwarded to the Board. The first assessment is to take place before the end of December 2001.

In his application dated December 2005 the Applicant seeks the following orders:

- (1) That the conditions placed on the Applicant's registration by the Professional Standards Committee on 31 October 2001 be removed; and
- (2) That each party to bear its own costs.

### **Background**

The Applicant was born on XX/XX/XXXX and obtained the degrees of Bachelor of Medicine and Bachelor of Surgery from the A University in 19XX. The Applicant was granted Fellowship of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists in 19XX. The Applicant was registered as a medical practitioner in New South Wales on XX/XX/XXXX with a condition imposed under S.7(1)(E) of the Medical Practice Act 1992 that he work solely as a specialist in obstetrics and gynaecology.

The Applicant in May 1994 held the position of a Visiting Medical Officer, obstetrician and gynaecologist at the B Hospital. In July 1995 the Applicant held the position of a Visiting Medical Officer, obstetrician and gynaecologist at the C Hospital, and at the D Hospital. Between February 19XX and February 19XX the Applicant held the position of a Visiting Medical Officer, obstetrician and gynaecologist at the E Hospital.

On 3 November 1998 Mr. Kieran Gleeson, the Chief Executive Officer of the Southern Area Health Service, requested that the Health Care Complaints Commission investigate a number of complaints relating to the medical treatment of patients which involved the Applicant. The Health Care Complaints Commission investigated the matters.

Following its investigation the Health Care Complaints Commission made eleven complaints against the Applicant. On 20, 21, 22, 23, 24, 27 and 28

August 2001 an inquiry was undertaken by a Professional Standards Committee comprising Dr. Don Child, Dr. Mark Carlton and Ms. Ruth Cotton to consider the Complaints.

Ten of the Complaints considered by the Professional Standards Committee alleged that the practitioner engaged in conduct which demonstrated a lack of adequate knowledge, judgment and care in the practice of medicine in his treatment and management of nine of the Applicant's patients. The additional Complaint considered by the Professional Standards Committee alleged that the practitioner suffered from an impairment within the meaning of clause 3 of the Dictionary of the Medical Practice Act 1992 which detrimentally affected or was likely to detrimentally affect the practitioner's physical capacity to practice medicine. The Particulars of the Complaint were as follows:

- "(1) The practitioner has a high myopia of the eyes;*
- (2) The high myopia impacts on his ability to adequately perform surgical procedures, in particular, microsurgical procedures, working within body cavities and conducted laparoscopies".*

The Committee made separate findings in relation to each Complaint which resulted in findings of proven unsatisfactory professional conduct in some instances and findings in other instances, that the Applicant was not guilty of professional misconduct. Further, the Committee found that the Applicant suffered from an impairment within the meaning of clause 3 of the Dictionary of the Medical Practice Act 1992. The Professional Standards Committee imposed two conditions on the Applicant's registration, which are the subject of this application.

Following the Professional Standards Committee inquiry, the Applicant was assessed at regular intervals by an ophthalmologist appointed by the New South Wales Medical Board. The ophthalmologist reported to the Board that the Applicant's vision was stable.

In September 2004 the New South Wales Medical Board conducted a Performance Assessment of the Applicant held pursuant to S.86C of the Medical Practice Act 1992. The assessors appointed by the Board were Dr. Jan Dudley and Dr. Peter Bland. The recommendations of the assessors were in the following terms:

*"In accordance with the Medical Practice Act 1992 it is the finding of these assessors that Dr. Y's professional performance is at the standard reasonably expected of a practitioner of an equivalent level of training or experience.*

*The assessors believe that Dr. Y would benefit from some constructive feedback, and recommend that one of the assessors formally counsel Dr. Y about aspects of his practice that could be further improved.*

*In addition, the assessors believe that the existing conditions on Dr. Y's registration, other than the condition required because of his status as a Conditional Specialist, serve no continuing useful purpose."*

On 20 January 2005 the Applicant underwent cataract surgery on the right eye which was performed by a cataract and refractive surgeon. On 27 January 2005 the Applicant underwent cataract surgery on his left eye which was also performed by the same surgeon. He implanted myopic intra-ocular lenses during the course of the cataract surgery. On 7 March 2005 the surgeon wrote a report regarding the Applicant in which he opined:

*"When I reviewed him today, his unaided vision was 6/9 in the right eye and 6/7.5 in the left eye. For near (stet) he was able to read N6 with either eye and N5 binocularly. I tested his stereopsis which is excellent.*

*It is my opinion that Dr. Y's vision is now superior to that which it was for the past decade."*

On 20 May 2005 the Applicant's solicitors wrote to the New South Wales Medical Board and requested that the two conditions placed on the Applicant's registration by the Professional Standards Committee be removed from the Applicant's registration. On 19 August 2005 the New South Wales Medical Board advised that the Board's Conduct Committee on 21 June 2005 concurred with the view of the performance assessors that the two conditions placed on the Applicant's registration by the Professional Standards Committee served no continuing useful purpose. The solicitor for the Health Care Complaints Commission informed the Tribunal today that the Health Care Complaints Commission does not oppose the removal of the two conditions placed on the registration of the Applicant by the Professional Standards Committee.

**Finding and Orders of the Tribunal**

The Tribunal finds that the Applicant does not suffer from an impairment within the meaning of Clause 3 of the Dictionary of the Medical Practice Act 1992.

The Tribunal orders:

1. That the conditions placed on the Applicant's registration by the Professional Standards Committee on 31 October 2001 be removed;
2. That each party to bear its own costs.

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Deputy Chairperson, Judge R.H. Solomon

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Dr. D. Semmonds

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Dr. K. Edwards

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Dr. M. Gleeson