

**IN THE MEDICAL TRIBUNAL OF NEW SOUTH WALES**

**THE MEDICAL PRACTICE ACT 1999**

DEPUTY CHAIRMAN: HIS HONOUR JUDGE J C McGUIRE  
MEMBERS: DR JOANNA HELY  
DR EMERY KERTESZ  
DR MAUREEN GLEESON, PhD

**No. 40035/05 - DR RASHESH DINAKAR**

**REASONS FOR DETERMINATION**

**24<sup>th</sup> APRIL, 2006**

**Nature of Complaint**

Pursuant to the Medical Practice Act 1992 (the Act), the Tribunal is enquiring into a complaint of the Commissioner, Health Care Complaints Commission (the Complainant) into professional conduct of Dr Rashesh Dinakar.

The Commissioner complains that Dr Rashesh Dinakar (the Practitioner), being a medical practitioner registered under the Act has been guilty of unsatisfactory professional conduct and/or professional misconduct within the meaning of Section 36 and Section 37 of the Act in that he:

- (1) Has demonstrated a lack of adequate knowledge, judgment or care in the practice of medicine and/or

- (2) Engaged in improper and unethical conduct relating to the practice of medicine.

### **Complaint One – Particulars**

- 1) The Practitioner failed to complete a course offered by the Pharmaceutical Services Branch, in contravention of order/condition 2.
- 2) The Practitioner failed to undertake and complete a five week module and provide evidence that he had completed the module on Issues in General Practice Prescribing conducted by the Department of General Practice, Monash University by the end of 2002, in contravention of order/condition 4.
- 3) The Practitioner failed to complete a ten weeks module on Ethics conducted by the Department of General Practice, Monash University, in contravention or order/condition 6.

### **Particulars – Complaint Two**

- 1) The Practitioner failed to complete a five week module on Issues in General Practice Prescribing conducted by the Department of General Practice, Monash University by 31 December 2003, in contravention of condition 8.
- 2) The Practitioner failed to complete a ten week module on Ethics conducted by the Department of General Practice, Monash University by 31 December 2003, in contravention of condition 11.
- 3) The practitioner failed to provide the Medical Board with progress reports by the last day of September, October and November 2003 on the modules and assignments he had completed for the Ethics course he was enrolled in, in contravention of condition 14.

## Orders Sought

The Commissioner seeks, pursuant to Section 64 of the Act, a finding that the practitioner is guilty of unsatisfactory professional conduct and/or professional misconduct and that he be required to complete further courses.

## Unsatisfactory Professional Conduct

Section 36 of the Act sets out the matters which constitute unsatisfactory professional conduct. It relevantly provides:

*Unsatisfactory professional misconduct of a registered medical practitioner include inter alia:*

**m) Other improper or unethical conduct**

*Any other improper or unethical conduct relating to the practice or purported practice of medicine.*

## Professional Misconduct

Section 37 of the Act sets out the meaning of professional misconduct:

*“Professional misconduct of a registered medical practitioner means unsatisfactory professional conduct of a sufficiently serious nature to justify suspension of the practitioner from practising medicine or the removal of the practitioner’s name from the Register.”*

The obligations of medical practitioners is encapsulated by Priestly J A in **Richter v Walton**, an unreported decision of the 15<sup>th</sup> July, 1993:

*“The degree of trust which patients necessarily give to their doctors may vary according to the condition which takes the patient to the doctor. Even in regard to the most commonplace medical matters, the trust a patient places in a doctor is considerable. In some cases, of which the*

*present seems to be an example, the patient's trust cannot help but be almost absolute. The doctor's power in regard to the patient in such cases is also very great. I do not mean power in the abstract way but as a matter of fact; the extent of the power will vary according to the temperament of the patient, but the doctor with some patients and for limited periods, because of the relationship in which they are temporarily placed, is in a position to do whatever the doctor wants with the body of the patient. This is one of the reasons why doctors are subject to correspondingly great obligations and are expected to maintain high standards; all this being very much in the public interest."*

### Onus and Standard of Proof

The standard of proof to be applied by the Tribunal is that referred to in **Rejfeke v McElroy** (1995)112 CLR 517 @ 521. That standard was applied in **Bannister v Walton** (1993) 30 NSWLR 699 where it was held that the requirement is that the Tribunal be "*comfortably satisfied on the balance of probabilities*".

The Tribunal must have regard to the gravity and importance of the matters which it is deciding in accordance with the principles stated in **Briginshaw v Briginshaw** (1938) 60 CLR 336 @ 360 – 363. At pages 361 and 362 Sir Owen Dixon stated:

*"Except upon criminal issues to be proved by the Prosecution it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the Tribunal. But reasonable satisfaction is not a state of mind that is obtained or established independently of the nature or consequent of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question, whether the issue has been proved to the reasonable satisfaction of the Tribunal. In such matters "reasonable satisfaction" should not be proved by inexact proofs, indefinite testimony, or indirect inferences."*

The evidence discloses that the Practitioner improperly issued four prescriptions for the drug Rohypnol at the request of a pharmacist who informed him that she had already dispensed the drugs to patients. Their regular GP wasn't available.

Without any contact or consultation with the two patients, the Practitioner issued the scripts.

Not only were the scripts issued improperly and inappropriately, the amount of the drug subject to the scripts were excessive. Clearly the drug Rohypnol should not have been prescribed without a proper investigation of the necessity for the drug. Rohypnol is notoriously a drug resorted to by addicts.

In December, 2001 the Professional Standards Committee enquired into the Practitioner's conduct arising out of such prescriptions and he was found guilty of unsatisfactory professional conduct.

On 20<sup>th</sup> February, 2002 the Professional Standards Committee made orders pursuant to Section 61(d) of the Act reprimanding the Practitioner and made the further orders as set out in the Particulars to Complaint One.

The Register was amended to reflect the Practitioner's conditional registration.

The Practitioner complied with some of these orders however he did not meet the requirement that he complete a five week module on issues on general practice prescribing, and a 10 week module on ethics and the provision of progress reports on the same.

On the 7<sup>th</sup> July, 2003 a Section 66 enquiry inquired into the Practitioner's conduct with regard to his failure to fully comply with the conditions imposed by the Professional Standards Committee.

In the course of the Section 66 Enquiry the Practitioner was questioned as to his efforts to complete the required courses. He acknowledged that conditions had been placed on his registration for the protection of the community and claimed that he had improved his general knowledge by attending continuing medical education sessions.

He went on to state that he had been depressed and distracted because of his need to care for an elderly mother adding that his practice was busy and he referred to his grave economic problems.

Before that enquiry he claimed that things would be different – that he would find time to attend the required courses by re-arranging his work obligations. He proffered his assurance to the enquiry that he would abide by any requirements of the Board.

It was his claim that he did not receive information from the Pharmaceutical Services Branch on prescribing narcotics and restricted substances.

The Enquiry did not accept this claim. It expressed its concern that he was unable to follow things through without constant reminders. It also expressed its concerns regarding the truthfulness of some of his answers, many of which were vague and unconvincing. It was also considered that he displayed a lack of insight and judgment and that he had not accepted the need to adhere to the conditions of his registration.

It was noted that the audit conditions imposed by the Professional Standards Committee were apparently met and that Dr John Dawson prepared an audit report in which he opined “The conduct of Dr Dinikar’s practice was appropriate with satisfactory management of his patients other than the one patient discussed”. Accordingly, there was no requirement for a second audit to be conducted.

Pursuant to Section 66 (i) (b) of the Act, further conditions were imposed on his practice of medicine with effect from the 7<sup>th</sup> July, 2003. Those conditions are as set out in Annexure B on the Practitioner’s Registration.

Yet again, the Practitioner failed to fully comply with the conditions imposed.

Through extensive correspondence from the Medical Board he was reminded of his obligations and he seemingly embarked upon a deliberate course of ignoring those reminders.

In the light of these reminders and his persistent failure to fully comply with the conditions imposed, it is difficult to escape the conclusion that he was simply defying the Medical Board – that he had decided what

constituted compliance and that he would register in the various courses as and when he pleased, if he pleased.

The Tribunal notes that the Practitioner successfully completed an assessment of his knowledge of prescribing practices and the requirements under the Poisons and Therapeutic Goods Act. The Pharmaceutical Services Branch had advised him of this assessment on the 24<sup>th</sup> September, 2003.

The Practitioner is aged 57. He obtained his qualifications in India and has practised in Australia in various roles since 1975.

The Tribunal has no reason to doubt the Practitioner's claims that he routinely works 6 days a week usually from 8 am to 8 pm. And it has been made aware of his parlous financial situation and accepts that he has worked long and hard in the interests of his patients and to assist his aged and ill mother, and various disadvantaged family members.

He has recently sought psychiatric treatment which he is currently receiving.

There are glowing references and testimonials before the Tribunal as to the Practitioner's competence, his caring attitude and his dedication to his patients. The Tribunal is further aware that prior to the conduct which brought him before the Professional Standards Committee and the Section 66 enquiry, he had apparently conducted his practice without complaint.

The Practitioner has recently enrolled, yet again, in the required courses, and has partially completed one.

The Tribunal is assured that as a result of changing circumstances and the psychiatric counselling he has been receiving he is now a different person. These assurances are similar to those previously made.

The Tribunal is prepared to accept these assurances and current undertakings albeit with reservations.

It considers that it is in the interests of the community and the profession that he complete the courses mandated and will extend to him the further opportunity to fulfil his obligations.

This Tribunal does not seek to bind or influence any other Tribunal which might be called upon to consider any complaint against the Practitioner however if there was any serious and wanton breach of his current undertakings, it would appear to this Tribunal that such breach could lead to a finding of professional misconduct.

The Tribunal is comfortably satisfied that his present conduct constitutes unsatisfactory professional conduct.

### Orders

- 1) The Practitioner be reprimanded;
- 2) The Practitioner is ordered to complete the course “Issues in General Practice Prescribing” conducted by the Department of General Practice, Monash University by November 2006.

- 3) The Practitioner is ordered to complete the course “Ethics” conducted by the Department of General Practice, Monash University by November 2006.
- 4) The Practitioner should be subject to the supervision of a registered medical practitioner for the period during which the Practitioner is completing the courses referred to in 2) and 3) above:
  - a) The Practitioner 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 Practitioner’s compliance with any conditions on his registration as a medical practitioner in accordance with the Medical Board’s policy on the “Selection and Responsibilities of Supervisor – PCH7.1” as updated from time to time;
  - d) Supervision of the Practitioner is to be in accordance with “Level 3” of Medical Board’s policy on the “Selection and Responsibilities of Supervisor – PCH7.1”;
  - e) The Practitioner 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 Complaint; and the Medical Tribunal’s Reasons for Decision;
  - f) The Practitioner and approved supervisor must meet, in person, on a monthly basis for the purpose of the

- supervisor monitoring the Practitioner's progress with the Monash University courses;
- g) The approved supervisor must complete a record of matters discussed with the Practitioner at each meeting in a format approved by the Medical Board;
  - h) The Practitioner is to authorise the approved supervisor to provide a written report to the Medical Board at the conclusion of each meeting with respect to the Practitioner's compliance with conditions of practice;
  - i) The approved supervisor must inform the Medical Board immediately if they have any concerns in relation to the Practitioner's compliance with the supervision requirements or any other condition of registration; or if the supervisory relationship ceases;
  - j) In the event that the approved supervisor is no longer willing or able to provide the supervision required by these Orders, the Practitioner is to nominate another supervisor for approval by the Medical Board within 28 days of the cessation of the original supervisory relationship;
  - k) The cost of the supervision, meetings and reports is to be met by the Practitioner.
- 5) The Medical Board or its Committees may at its discretion terminate or vary the conditions at its discretion;
- 6) The Practitioner pay the Complainant's costs of the proceedings.

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HIS HONOUR JUDGE J C McGUIRE

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DR JOANNA HELY

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DR EMERY KERTESZ

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DR M GLEESON, PhD