

DCC188 RMM-G/8

MEDICAL TRIBUNAL OF NEW SOUTH WALES

DEPUTY CHAIRPERSON: JUDGE REIN

MEMBERS: DR KERTESZ
DR J KENDRICK
MR R KELLY

FRIDAY 29 SEPTEMBER 2006

IN RE FRANK SIMONSON AND THE MEDICAL PRACTICE ACT**JUDGMENT**

HIS HONOUR: This is in an application by Dr Simonson pursuant to s 92 of the **Medical Practice Act 1992**, which we shall refer to as the MPA, for review and removal of conditions 3(a), (e), (f) and (h) imposed upon him by a decision of the Professional Standards Committee on 7 December 1995. The conditions mentioned, together with other conditions, were imposed following findings that Dr Simonson had, in the period 1991 to 1995, prescribed drugs beyond the authority issued to him, also in some cases without authority, and that he had prescribed quantities not in accordance with therapeutic standards; also that he had failed to keep adequate records as required by relevant legislation and obtained certain prescription medicines known as schedule 4 medicines for his own use out of prescriptions written for patients and that, by reason of these matters, Dr Simonson was guilty of unsatisfactory professional conduct within the meaning of section 36 MPA, having demonstrated a lack of adequate knowledge, skill, care and judgment in the practice of medicine, and improper and unethical conduct relating to the practice of medicine.

The Professional Standards Committee reprimanded

his right to practise, including requiring completion of a course in family medicine, requiring auditing of his practice, and it also placed restrictions on his ability to administer schedule 8 drugs other than in his capacity as a visiting medical officer at a local hospital with which he was connected.

In support of his application, Dr Simonson provided a statement dated 15 January 2006, which he today adopted, and a reference in the form of a letter from a Mr Ian Ball, the letter being dated 18 April 2006. Both the statement and the letter are to be found together with the Professional Standards Committee's decision of 7 December 1995 in exhibit A.

Dr Simonson also gave evidence on oath. He was cross-examined by Mr De Courcey, who appears on behalf of the Medical Board, although the cross-examination was directed to filling out the application rather than seeking to undermine the case for Dr Simonson. There was no challenge to Dr Simonson's credibility.

The tribunal was concerned at the absence of any report from any peer of Dr Simonson, either a general practitioner or a person in the hospital system in relation to Dr Simonson's practice of medicine, and the absence of any report from any treating practitioner. The absence of such material was explained by Mr Ainsworth, counsel who appears on behalf of Dr Simonson on this application, on the basis of a concern by Dr Simonson as to the stigmatisation that would arise from acquainting people with information about his past conduct.

In coming to the view that it is appropriate, notwithstanding the absence of evidence to which we have just referred, to remove the restrictions imposed on Dr Simonson, the tribunal takes into account the following matters:

- 1) A long period - that is eleven years - has passed since the PSC's orders were made.
- 2) Dr Simonson has complied with the conditions that were imposed upon him over that period, and on oath has stated that he has not prescribed any schedule 8 drugs outside the hospital setting.
- 3) The PSC regarded it as appropriate, even in 1995, to permit Dr Simonson to prescribe schedule 8 drugs in a hospital setting, and there is no evidence before us of any complaint or any adverse report relating to prescription by Dr Simonson at the hospital with which he is connected. He is regularly on call at Pambula Hospital.
- 4) The doctor is now a sole practitioner, and has been so over the last sixteen months. His inability to prescribe pain-reducing drugs is now creating a problem because he is not able to pass over care of the patients needing such medications to his partner, as he was able to do in the past. There are occasions when patients have to be taken by ambulance, and even sometimes by Dr Simonson himself, to the local hospital because of the existing restrictions. At the hospital, Dr Simonson can prescribe the relevant drugs. It is a hospital which is not permanently staffed with doctors, and one of the doctors

on call on a regular basis is Dr Simonson. Patients in need of medication of the type which Dr Simonson is presently prevented from prescribing in his general practice include patients of longstanding who live in the area and also includes visitors to the region and elderly patients in a private nursing home.

5) Merimbula/Pambula is a rural area of need. It has at present, we were informed, four general practitioners of whom Dr Simonson is one, and it is a relatively small number of medical practitioners in comparison with the total population, particularly having regard to the summer months where there is a very large expansion of the population. Pambula Hospital has no resident staff and the region has very limited obstetric services, an area in which Dr Simonson has some special expertise.

6) The matters referred to in paragraphs 4) and 5) above have significance quite apart from the benefits to Dr Simonson of removal of the restrictions, and that is to the public benefit in having Dr Simonson being able to practise without restriction.

7) The Board not only does not actively oppose the removal of conditions but accepts, on the evidence presented to the tribunal, that there is a sufficient basis for removal of conditions 3(a), (e), (f) and (h).

8) The personal circumstances of Dr Simonson, connected with the matters which were the subject of the PSC findings, on his evidence, appear to have dramatically changed since those days.

Although we are of the view that it is appropriate

for the restrictions to be lifted, having regard to the absence of material to which we have earlier referred, and the details of the contents of the PSC decision handed down in December 1995, we regard it as appropriate to make a recommendation in a form which I will deal with in a moment, and also to seek from Dr Simonson an undertaking as part of the basis upon which we reach the conclusion that the restrictions that we have referred to earlier ought be removed. Dr Simonson, through his counsel, undertakes to the tribunal to provide copies of his schedule 8 drug register to the New South Wales Medical Board on a quarterly basis for two years.

Also the tribunal thinks it is appropriate, and does recommend to the New South Wales Medical Board, that an audit be performed by the Pharmaceutical Services Branch of NSW Health in respect of schedule 8 drugs prescribed and held by Dr Simonson, within six months of today's date and thereafter, as the Medical Board sees fit.

DEPUTY CHAIRPERSON: Now does the tribunal need to make any order about costs?

DE COURCEY: I have no instructions on that your Honour. I could take instructions on that. It's just that that hasn't been--

DEPUTY CHAIRPERSON: What's the normal position on such applications? Is there a normal position?

AINSWORTH: On applications like this I can't say definitively. In the tribunal, I mean costs have varied. This is a re-application, can I say this. This is a re-application to be re-registered. If that succeeded we would be paying the costs but it's not an application for re-register. The applicant would pay the costs but I would say this is a matter each party can pay their own costs. Not that I expect they will be substantial.

DEPUTY CHAIRPERSON: It's up to the board really whether you put something contrary to me.

DE COURCEY: If I can put it this way your Honour that it is an application from Dr Simonson and the normal course is that the board would seek costs in any application made by the other party. That is the normal course and that's what I would put.

DEPUTY CHAIRPERSON: I think that's appropriate Mr Ainsworth.

DEPUTY CHAIRPERSON: The formal orders the Tribunal will make are these. Restrictions identified as 3(a), 3(e), 3(f) and 3(h) of the conditions imposed upon Dr Simonson by the Professional Standards Committee on 7 December 1995, are removed. Also the tribunal orders that Dr Simonson pay the costs of the Medical Board of this application.

DEPUTY CHAIRPERSON: Anything else that needs to be done

DE COURCEY: No your Honour.

AINSWORTH: No your Honour.

DEPUTY CHAIRPERSON: Can the exhibits be returned?

DE COURCEY: Yes your Honour.

HIS HONOUR: I direct that the exhibits be returned forthwith and signed for. oOo