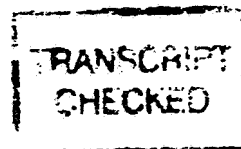


THE DISTRICT COURT
OF NEW SOUTH WALES
CIVIL JURISDICTION



JUDGE SOLOMON
AND A TRIBUNAL OF THREE

MONDAY 8 DECEMBER 1997

MEDICAL TRIBUNAL: IN RE: MR SENG PEE YAP

JUDGMENT - Reasons for Determination

HIS HONOUR: The Medical Disciplinary Tribunal on 14 November 1984 made an order that the name of the applicant, James Seng Yap, be removed from the Register of Medical Practitioners. The applicant brings this application for a review of the order pursuant to s 92 of the **Medical Practice Act** 1992.

History

The applicant was born on 2 February 1947 in Malaysia. The applicant graduated in Medicine from the University of New South Wales in 1975. The applicant worked as a resident medical officer for one year subsequent to his graduation in the Hunter District of New South Wales. The applicant, additionally worked at the Royal Newcastle Hospital, Belmont Hospital, Maitland Hospital and the Balmain District Hospital.

In 1977 the applicant commenced a general practice at 18 Wellington Road East Lindfield. Between 1982 and 1984 the applicant committed offences under the **Health Insurance Act** of 1973 in that he made statements which he knew to be false in a material particular.

The applicant was charged with twenty four charges in respect of breaches of the Act and on 17 February 1984 the applicant pleaded guilty to those charges. The applicant was fined \$100 in respect of each charge

together with \$16 costs. The applicant was ordered to pay compensation to the Medical Benefits Fund of Australia in the sum of \$1140.90. The applicant was ordered to pay \$300 professional costs.

On 14 November 1984 the Medical Disciplinary Tribunal constituted under s 38 of the **Medical Practitioners Act 1938** ordered that the applicant's name be removed from the Register of Medical Practitioners in New South Wales. This is the first application made by the applicant for re-registration.

The applicant, in 1985, obtained registration as a medical practitioner in the State of Brunei and operated a medical practice in Bandar Seri Bergawan. The applicant continued to work as a general practitioner in Brunei until May 1994. In May 1994 the applicant left his practice in Brunei as it was his intention to commence a health clinic in Indonesia. The clinic has not commenced to operate due to financial complications.

The applicant has sought registration as a medical practitioner in Singapore as he intends to practise as a general practitioner in Singapore, however, he is unable to obtain registration in Singapore due to the fact that he does not hold registration in the State of New South Wales. The Tribunal accepts the applicant's evidence that he worked in a general practice in Brunei until May 1994 and that during that period of time he to maintained his level of medical knowledge by conversing with specialist medical practitioners by consulting a library of medical literature which he kept at his practice and by, on a regular basis, attending of medical education programs arranged by drug companies and by attending International Medical Conferences.

The Present Application

The applicant gave evidence regarding his present circumstances and the current steps taken by him to maintain his medical knowledge. In addition to that evidence was given from which the tribunal can determine that the applicant has reformed his character. The applicant, in his statement dated 8 December 1997, being exhibit B tendered in support of the application, acknowledged that he understands that in the past he has been guilty of acts of dishonesty and misconduct.

The applicant has, in addition, provided a number of references to the tribunal. Those references include the reference of Dr Chang, being exhibit C. Dr Chang is an orthopaedic surgeon who practises in Singapore. Dr Chang, in his reference, indicates that the applicant, on a regular basis during the applicant's residence in Brunei, requested advice and discussed medical cases with him. Dr Chang is of the view that,

"his character is upright and clean and his medical competency is at the level of senior doctor over twenty years of general practice in family medicine."

The applicant also tendered into evidence a report from Dr Lim E Koon, being exhibit D. Dr Koon indicated that he knew the applicant for approximately six years and that during that time he had discussed medical issues with the applicant. Dr Koon indicated that he found that the applicant had taken it upon himself to become conversant with ongoing medical practice. Dr Koon is of the view that the applicant,

"had proved himself to be a competent general practitioner to the rural community in Bandar Seri Bergawan."

Additionally the applicant tendered character references. These will not be referred to as the applicant's character has not been challenged by the respondent.

The respondent called oral evidence in this case. That evidence consisted of the evidence of Dr Jeremy Bunker whose report dated 28 October 1997 was tendered into evidence as exhibit 1. Dr Bunker was in court whilst the applicant gave his evidence. Dr Bunker confirmed his opinions which were contained in paragraph 1. That opinion being,

"In summary I believe that Dr Yap is entitled to expect sympathy in consideration of his request to re-register as a medical practitioner and his past misdeed is not sufficient to allow this request to be dismissed. However, his clinical competence has not been adequately demonstrated by the evidence he has provided. Given difficulties involved in establishing this it may be prudent that provisional registration be considered with full registration conditional on the successful completion of supervised clinical practice in a teaching hospital or similar institution for a period of a year. I point out this is a requirement for foreign graduates wishing to practise in Australia whose studies are recognised as equipping them with the

attributes necessary to enter practice but whose experiences after graduation are unable to be evaluated. This is not a reflection on the inadequacy of their experience but is a consequence of the difficulty in evaluating their experience as it applies to the practice of medicine in New South Wales."

The respondent does not oppose the applicant's application. The respondent, however, has pointed out that the tribunal has a duty to protect the public of New South Wales.

Conclusion

The applicant bears the onus to prove on the balance of probabilities that he is now a fit and proper person to be re-registered and further the applicant must prove on the balance of probabilities that he is now of good character and has overcome the defects of his character which were illustrated by the conduct which caused him to be removed from the Register of Medical Practitioners.

On considering all the material before it the Tribunal determines that the applicant is a fit and proper person to be re-registered and pursuant to s 94(1) (c) of the **Medical Practice Act** 1992 the Tribunal orders that the applicant be re-registered as a medical practitioner. Such re-registration is subject to the following condition. That the applicant provide to the New South Wales Medical Board notice of his intention to practise medicine in the State of New South Wales and the applicant receiving an acknowledgment in writing by the New South Wales Medical Board of such notice. The tribunal notes the undertakings to be given by the applicant.

<APPLICANT(4.OOPM)

ON FORMER OATH

PIKE: Q. Mr Yap, you have read through those undertakings have you not?

A. Yes I have.

Q. Are you prepared to give that undertaking to this tribunal?

A. Yes I do.

Q. Could I ask you firstly to sign and date the undertaking?

(no verbal reply)

Q. Could I then ask you to read aloud the entirety of what's written there?

A. Undertaking by Mr Seng Pee Yap. I, Seng Pee Yap, hereby referred to as the applicant, give the following undertakings to the medical tribunal.

1. That I, for a period of six months or such other period of time as the New South Wales Medical Board may determine, shall practise in a full time position as a medical officer in a public hospital in New South Wales as approved by the New South Wales Medical Board.
2. That I shall advise the administration of the public hospital referred to above of the terms of the undertaking given by me to the medical tribunal.
3. That I, each month during my periods of training at the above mentioned public hospital, shall arrange for my supervisor to provide to the New South Wales Medical Board a report setting out his or her assessment as to my ability and capacity to practise medicine.
4. That I shall, following satisfactory completions of the period of training referred to above, for a period of three years provide to the New South Wales Medical Board the details of my place of practice and residence.
5. That I shall inform the Singapore Medical Council of the terms of these undertakings in the event of my making an application for registration as a medical practitioner in Singapore.

PIKE: Thank you Mr Yap. Could you hand that document to the court officer.

<WITNESS RETIRED

HIS HONOUR: That leaves only one matter, the question of costs.

KIEL: I'm not instructed to ask for costs in this matter your Honour.

PIKE: I am not instructed to make any application.

HIS HONOUR: The order that the Tribunal makes is that each party pay its own

costs.

I have delivered the Determination on behalf of the Tribunal and as far as the Members are concerned I am firstly going to ask Dr Flood do you agree with the reasons for the Determination?

FLOOD: I agree.

HIS HONOUR: Dr Robertson?

ROBERTSON: I agree.

HIS HONOUR: And Ms Collier?

COLLIER: I agree.

PIKE: Thank you your Honour. One final housekeeping matter before the tribunal does rise. Would it be possible for the tribunal to make some expression to the transcript services in relation to getting a copy of the judgment typed up. The doctor's application will not be able to be made until it is accompanied by a copy.

HIS HONOUR: You'll have to apply for a copy of the transcript, a copy of the judgment I should imagine is more appropriate. I request that expedition be given to any application for a copy of the transcript and judgment in this case.