

**THE MEDICAL TRIBUNAL
OF NEW SOUTH WALES**

No: 40007 of 2008

IAN RAYMOND GREGORY
Applicant

Application under s 92 of the Medical Practice Act 1992

**Medical Tribunal constituted under
s 146 of the Medical Practice Act 1992:**
Deputy Chairperson, Judge Peter Johnstone
Dr Michael Giuffrida
Dr Saw-Hooi Toh
Mr Russell Smith

Hearing dates: 29, 30 September and 21 November 2008
Date of Decision: 28 January 2009

REASONS FOR DECISION

The application

1. On 1 March 2000 the name of the Applicant, Ian Raymond Gregory, was removed from the Register of Medical Practitioners in New South Wales. On 5 May 2000 the Medical Tribunal ordered that he not be re-registered as a Medical Practitioner; and that any application for review of its decision not be made until after the expiry of 5 years. The Applicant has now applied for a review: s 92(1)(b) of the *Medical Practice Act 1992*. He seeks a reinstatement order for re-registration as a Medical Practitioner: s 94(1)(c) and s 94(2).
2. The Tribunal may only review a decision where significant fresh evidence is produced and it is of the opinion that, in the circumstances, the decision should be reconsidered: s 94A(2). In addition to any other matter that the review may take into account, the Tribunal must take into account any complaint made about the Applicant: s 94A(3). The Tribunal may only make a reinstatement order if it is satisfied that the Applicant:
 - (a) is competent to practise medicine (that is, he has sufficient physical capacity, mental capacity and skill, and has sufficient communication skills, including an adequate command of the English language, to practise medicine), and
 - (b) is of good character: s 13

3. The Medical Board opposes any order for reinstatement. Its position is that the Applicant has not discharged the onus of establishing, on the balance of probabilities, that he is competent to practise medicine and that he is of good character. It submitted, in particular, that having regard to the serious deficiencies in his standards of conduct and his attitudes in the period leading up to his deregistration and for some time following, the Applicant has failed to present clear proof that he has established himself as a different man: *Ex parte Tziniolis; re the Medical Practitioners Act (1966) 67 SR 448 at 461.*

The decision of the Medical Tribunal on 5 May 2000

4. The orders of the Medical Tribunal on 5 May 2000, in particular the order that the Applicant not be re-registered as a Medical Practitioner, were made following an enquiry into a Complaint dated 9 March 1999 laid against the Applicant by the Health Care Complaints Commission, that:

“The respondent, being a medical practitioner registered under the Act, has been guilty of unsatisfactory professional conduct and/or professional misconduct within the meaning of Sections 36 and 37 of the Act in that being a registered medical practitioner, he engaged in conduct demonstrating a lack of adequate knowledge, skill, judgment or care in the practice of medicine and otherwise engaged in improper and unethical conduct relating to the practice of medicine.”

5. Eight specific matters were particularised. Some of the allegations were found not proved. However, the Tribunal was comfortably satisfied as to various matters that involved professional misconduct within the meaning of s 36 and unsatisfactory professional conduct within the meaning of s 37 of the Act, which might be summarised as follows:
 - In 1994, the Applicant removed a skin lesion from a patient’s back that was subsequently confirmed by pathology to be a malignant melanoma, but failed to follow up and inform the patient or take any effective steps to review the patient or discuss treatment options with him.
 - In 1996 the Applicant carried out several surgical procedures on patients, two of which were found to be unnecessary having regard to the pathology, and one of which involved removing the wrong section of a patient’s nose because he failed to adequately label a pathology specimen, leading to him misreading the histopathological report.
 - Also in 1996, the Applicant incorrectly diagnosed a patient’s condition without any proper clinical basis. He then performed an unnecessary liposuction fat transfer procedure and dermal fat graft to his face, during which the infection control was inadequate and the patient developed an infection.
 - In 1998, the Applicant inappropriately engaged in and maintained a sexual relationship with a patient while a professional doctor/patient relationship existed between them.
6. The Tribunal considered the defects in clinical practice as found by it, when taken together, demonstrated such a gross lack of adequate skill, judgment and care in the practice of medicine as to amount to professional misconduct.

7. Furthermore, the Tribunal found that the Applicant had demonstrated a total lack of insight into the problems that had led him to the Complaint against him. The Tribunal took into account several mitigating factors, including his use of illicit drugs, for which he was undergoing treatment and having regular drug screening, and his emotional instability, as to which he was seeing a psychiatrist and undergoing cognitive therapy. It stated:

“There are signs the respondent is now beginning to have an insight into his problems. However, he still has a long way to go.”

8. The issue before this Tribunal is whether the Applicant has established, on the balance of probabilities, that his circumstances have sufficiently changed such that he is now competent to practise medicine and that he is of good character.

History .

9. The Applicant was born on 19 September 1951 in the United Kingdom, migrating to Australia in 1957. He is now 57 years of age. After completing the Higher School Certificate, he studied medicine at the University of NSW, graduating MBBS with honours in 1977.
10. Whilst at university the Applicant shared a relationship with a fellow student, and they had a son. That relationship ended, and the partner retained custody, although the Applicant provided financial support for his son and thereafter maintained contact with him.
11. Upon graduation, he worked at the Royal North Shore Hospital as an intern and subsequently as a resident, until 1978. For the next two years he worked as the Registrar of Anaesthetics at Wellington Hospital in New Zealand and at the Royal Newcastle Hospital. In 1981 he returned to Sydney where he practised as a General Practitioner until 1987, when he moved to Perth.
12. After moving to Perth, the Applicant continued in general practice. In 1998 he went into partnership with a Dr Sachs in a ‘shop front’ practice, where patients were bulk billed under the Medicare scheme. During the period 1998 – 1990, the Applicant and Dr Sachs committed a series of Medicare offences. Claims were made for payment for medical services that were performed by non-qualified persons, and not by the Applicant personally. He was convicted in the District Court of Western Australia of 35 offences involving false Medicare claims under the *Health Insurance Act 1973 (Cth)*. He was ultimately fined, on appeal, a sum of \$40,250.
13. As a result of these convictions, a complaint of infamous conduct in a professional respect was found proved against the Applicant by the Medical Board of Western Australia, and he was suspended from practice for 6 months from 6 September 1991.
14. In 1988, the Applicant married his wife, Kathleen (known as Troy), and they had a child in 1991, when in Perth. A second child was born in 1996, after they had returned to NSW.

15. In the meantime, in 1990 a complaint was made against the Applicant by a female patient about a report in which he described her as suffering from severe anxiety, neurosis and paranoia, and required counselling. The patient claimed the report was written without her consent and without a proper examination, and then released to her husband, from whom she was separated, who used the report in divorce proceedings. A subsequent Inquiry conducted by the Medical Board of Western Australia found that the patient had never consulted the Applicant concerning her mental health, the preparation of the report constituted incompetence, and its release to the husband without her consent constituted improper conduct. He was reprimanded and fined a sum of \$7,500.
16. In 1993 the Applicant returned to New South Wales and moved to the Northern Rivers area where he became a surgical registrar at Lismore Base Hospital. Following that he went back into general practice, with an emphasis on dermatology and cosmetic surgery.
17. Whilst in Perth, the Applicant had developed an interest in plastic and cosmetic surgery, and did some further study in the United States. Between 1995 and 1997 he attended training programmes in cosmetic medicine and minor cosmetic surgery at the Australian Aesthetic Surgery Centre in Brisbane. He became a foundation member of the Cosmetic Physicians Society of Australia. In 1997 he gained a Diploma of Dermatology through the University of Cardiff. Between 1997 and 2000 he worked in the Special Interest Clinic, Tweed Heads and Byron Bay, in skin cancer and cosmetic medicine and surgery. In March 2000 he requested that his name be removed from the Register of Medical Practitioners.
18. The events leading up to his de-registration involved a deterioration in the Applicant's mental state, including the abuse of illicit drugs, and the breakdown of his marriage, resulting in subsequent acrimonious divorce proceedings.
19. These events appear to have commenced around 1994 when the first of the episodes the subject of the Complaint laid against him by the Health Care Complaints Commission occurred, involving his failure to follow up and inform a patient about a malignant melanoma confirmed by pathology following removal of a skin lesion from his back.
20. The next development was a letter sent on 14 October 1996 to the NSW Medical Registration Board by Dr Glascott, a colleague at the medical centre at which he worked. This letter stated:

"I wish to urgently advise that Dr Ian Gregory, in my professional opinion, and also of 2 other of his colleagues working at this surgery, is suffering from severe hypomanic-phase, Bipolar disorder. He has been approached regarding the need for medication but appears to have ignored this and remains quite insightful with regards to his problem.

Unfortunately we have discovered a number of patients where his surgical procedural judgment has been impaired, and as a result he now faces legal action from a number...of these patients.

There are other facts relating to money mismanagement, HIC fraud as well, which we are in the process of unravelling. I urge you to urgently attend to this problem through the "impaired doctor" arrangements that you have.

21. This letter precipitated an investigation by the Impaired Registrants Panel, which nominated a psychiatrist, Dr F T Varghese, to examine the Applicant. Dr Varghese examined the Applicant, also interviewed his wife, and provided a report dated 28 November 1996.
22. It was then revealed that in July 1995 the Applicant had consulted a psychiatrist in Brisbane, Dr Joan Lawrence, complaining of recurrent episodes of depression. He had had previous episodes of depression as far back as 1983, including a major episode in 1986, another episode in 1989 requiring a brief period of hospitalisation, and subsequent difficulties involving outpatient treatment. He was on antidepressant medication until 1994, but this ceased after his move to northern NSW, although he had recommenced medication in about March 1995. According to Dr Lawrence, he did not respond to medication and by late 1995 had become significantly depressed, and became incapacitated for work. His medication was changed and there was some improvement. It was then decided to add Lithium Carbonate to his medication. This led to 'full remission of his illness' and he was able to resume work at the end of April 1996. When she last saw him on 20 June 1996, he was 'very well'.
23. Dr Varghese provided a principal diagnosis of recurrent major depression that of itself did not impact on the doctor's capacity to be an effective practitioner. He recommended ongoing monitoring by Dr Lawrence on a regular basis.
24. Following an Inquiry held on 28 February 1997 by the Impaired Registrants Panel under s 182 of the *Medical Practice Act 1992*, the Applicant agreed to participate in the Impaired Registrants Program, and to several conditions being imposed, including treatment by a psychiatrist, and annual review of his condition by Dr Varghese.
25. The next recorded event was the Applicant's consultation with Dr Varghese on 6 April 1998 at which he told the doctor he was the best he had been since 1989 and that there had been no further episodes of depression, despite some stresses in his life particularly with respect to 'legal issues to do with his ex-partner'. He did not, however, disclose to Dr Varghese the affair he was having with his patient, [REDACTED], which became another aspect of the Complaint laid against him by the Health Care Complaints Commission.
26. [REDACTED] had begun consulting the Applicant in 1995. She had revealed to him her problems arising out of the separation from her husband and subsequent divorce. She had also discussed with him the possibility of a breast enlargement. He commenced a personal relationship with her in January 1998 that developed into a sexual involvement that then continued on a regular basis. There was divergent evidence as to the nature of relationship, and the duration of the affair. The Tribunal spent several pages in its Reasons discussing this evidence, following which it said this:

"The totality of the foregoing evidence satisfies this Tribunal comfortably on the balance of probabilities that the respondent (Gregory) is one who will tell that version of the facts which he believes at a given point of time will best suit his own interests... But, on the other hand, there are elements in the evidence of [REDACTED] which do not withstand close scrutiny."

27. Notwithstanding the conflicting evidence, the Tribunal found that the Applicant had inappropriately engaged in and maintained a personal and sexual relationship with [REDACTED] between January and June 1998, whilst she was his patient
28. The happy picture presented to Dr Varghese on 6 April 1998 was either untrue, or at least short-lived, because on 1 July 1998 the Applicant was admitted to the psychiatric hospital at Currumbin where he stayed for 2 weeks, and underwent 'cognitive therapy'. He then saw Dr Varghese on 21 July, and told him of a trip to the United States in March 1998 with his wife during which he had engaged in excessive drinking and drug taking. He had had frequent arguments with his wife who told him he was not 'his usual self'. None of this was revealed to Dr Varghese at the April consultation.
29. Upon their return to Australia, his wife was diagnosed with breast cancer, and she underwent several operations. Meanwhile, the Applicant told Dr Varghese, he had embarked upon 'multiple affairs' with various women. He had met one of these at a party and they had a brief affair *before* she became a patient. He presented to Dr Varghese as contrite and wishing to repair his marital relationship. He described his erratic behaviour as out of character, attributing it to hypomania. Not unexpectedly, in his report to the Medical Board dated 14 August 1998, Dr Varghese was quite equivocal about the diagnosis, vacillating between recurrent major depression and hypomania as a result of bipolar disorder. This vacillation is a recurrent theme in the doctor's subsequent reports.
30. In the meantime the Medical Board held an Inquiry under s 66 of the *Medical Practice Act 1992* on 6 November 1998, resulting in a Complaint dated 9 March 1999. By this time the Applicant had consented to the suspension of his registration as a medical practitioner, but in a letter dated 25 March 1999, the Medical Board indicated that the suspension was to be lifted to enable the Applicant to return to limited practice, one and a half days a week, to undertake limited consultations and procedures in connection with skin care advice, removal of simple skin cancers and other minor procedures, and cosmetic medicine confined to Collagen and Botox injections, superficial face peels and sub dermal scleropathy.
31. The proceedings before the Medical Tribunal were heard on 6, 7 and 8 March 2000. Prior to the proceedings the Applicant had requested his name be removed from the roll of medical practitioners. The Applicant did not appear on the first or second day of the hearing, but the Tribunal nevertheless commenced and proceeded with the hearing in his absence. He did, however, appear on the third day, and he gave evidence. As set out above the Tribunal was critical of his credibility. It went on to say:
- "...in his comments prior to giving evidence and also in his persistent conduct (he) has demonstrated a total lack of insight into the problems which have led him to the current Complaint."
32. The Tribunal delivered its decision on 5 May 2000, when it formally ordered that the Applicant not be re-registered and that an application for review should not be made by him before a period of 5 years.

33. Following the decision of the Tribunal, the personal life of the Respondent deteriorated. He underwent a period of depression during which he was re-admitted to hospital under the care of Dr Huntsman. Also during this period, the Applicant's deteriorating marital relationship broke down, notwithstanding a brief but unsuccessful attempt at reconciliation. There were bitter and acrimonious divorce proceedings, including an Apprehended Violence Order, and during which the Applicant's assets were frozen.
34. During 2001 he made several unsuccessful attempts to get his life back together, including a short-lived enrolment in a TAFE course and a period of work in beauty clinics administering Botox and Dermal injections.
35. Finally, in December 2001 the Applicant left Australia and travelled, ultimately going to Bali in January 2002, where he then lived and worked until 2007. While in Bali, he met his current partner, Suntiari Arifah (Annie), an Indonesian national, to whom he committed in March 2007 in a religious marriage ceremony in Surabaya. The Applicant and Annie returned to Australia in October 2007, residing with the Applicant's elderly mother in her home at Connell's Point.
36. The full detail of the work performed by the Applicant during his years in Indonesia was incomplete and in this regard the members of the current Medical Tribunal considered that the Applicant was not completely candid. According to his statement of 12 August 2008 he engaged in a variety of activities as a medical 'consultant', having been registered with the Balinese Department of Health as a 'medical cosmetic consultant' which authorised him to provide tuition and instruction to local doctors and nurses in registered clinics, but not to engage in clinical practice on his own account. The nature and extent of what his 'consultancy' activities actually involved was the subject of intense cross-examination before this Tribunal. The Applicant's evidence was unsatisfactory, such that this Tribunal found itself in agreement with the 2000 Tribunal when it said of him that he is "*one who will tell that version of the facts which he believes at a given point of time will best suit his own interests*".
37. His overall performance in the witness box was unsatisfactory and inconsistent with his pre-prepared statement, particularly his assertions as to insight and fresh understanding as to the ignominy of his conduct, which even now he attempts to justify and continues to trivialise. Much of his evidence was unresponsive and evasive, was facile, attended by equivocation, and lacking in the level of candour that a Tribunal is entitled to expect from a person professing insight and seeking reinstatement.
38. The Tribunal was, in the result, comfortably satisfied despite his protestations to the contrary, that the actuality of the Applicant's activities in Indonesia amounted to him performing surgery and other aspects of clinical practice on a regular basis, contrary to Indonesian law. More importantly, the nature of his obfuscation in relation to his activities in Indonesia was indicative of a continuing lack of insight and a deficiency of character inconsistent with the standard required of a medical practitioner.

The Applicant's submissions

39. The Applicant's contention is that he is a different person today from the person he was at the time of the Tribunal's order in 2000.

40. In his Statement of 12 August 2008 he said, for example:

"I have for some time accepted all the adverse findings of the Tribunal and am in agreement with everything that the Tribunal found to be defects in my character... I believe my unacceptable behaviour was due to character flaws at that time, in particular an underlying narcissistic trait, and poor judgment and reckless behaviour exacerbated by drug use (Paragraph 15).

It has taken time to gain insight and remorse and it has not been a straightforward path... True rehabilitation and insight did not commence until 2002... Even then, the gaining of insight has taken a long time. It has involved the acceptance of an underlying personality disorder as well as psychiatric disorder as causes of my problems. No insight could be obtained until I was free from the effects of non-prescribed drugs and in gainful employment... I now come before the Tribunal as a changed man...(Paragraphs 58 – 60).

I realise that, at age 56, this is my last chance. I unreservedly believe that my underlying personality defects (narcissistic personality) and drug use were the main factors that caused my fall from grace rather than depression and stress. I believe that acceptance and insight into this condition has been fully obtained (paragraph 69).

41. These themes were continued and expanded upon in the written submissions of the Applicant's counsel (see for example, paragraphs 23 – 25), and in oral submissions (T 132 – 137).

42. The Tribunal's view, however, is that ultimately the Respondent has not obtained a deep appreciation and emotional connection with his wrongdoing and there is no cognitive understanding of it, such that he is really just saying what people want to hear. It was unable to conclude on the basis of all the evidence that the Applicant is now a fit and proper person to join other members of the medical profession in the responsible and trusted activities involved. The Tribunal's assessment of the Applicant's character, uprightness, honour, trustworthiness and reliability for the future is such that it does not consider he is competent to practise medicine, nor is he of good character. In short, the Tribunal finds that he has not established himself as a different man

43. We have already expressed views as to the Applicant's poor credibility, the insufficient level of candour and his continuing lack of insight. We also note that notwithstanding his stated acceptance of the findings of the earlier Tribunal, he continued to cavil before this Tribunal with what it said (T 139.24 - 142.2).

44. There was also his attempt to minimise his misconduct in the sexual relationship with his patient, [REDACTED] by describing it as consensual, not involving moral turpitude, and not taking 'advantage of a particularly vulnerable or unbalanced patient'. The impropriety of sexual activity between medical practitioners and patients is now recognised as unequivocal. The doctor patient is not and never can be one of equality. The relationship is dependent upon the ability of the patient to have absolute confidence and trust in the doctor. The patient is ever vulnerable, and exploitation is an abuse of power. Personal involvement with a patient carries a significant risk of the clouding of clinical judgment. The Applicant's evidence satisfied the Tribunal that he has not grasped these concepts.

45. The Tribunal has already adverted to the unsatisfactory nature of the Applicant's evidence about his activities in Indonesia. There are other examples demonstrating the ongoing absence of true rehabilitation, honesty and insight, beyond 2002:

- The Applicant's disrespect for the Medical Board of Western Australia (T 142.4 - 145.9).
- His lack of candour with Dr McCaffrey as to drug taking (T 25.3 - 27).
- The email of 16 October 2003 to the Medical Board (Exhibit 6).
- His lack of candour even to his partner Annie, about his drug problem (T 119.40 - 50 and T 147.44 - 148.13)

46. Finally, The Tribunal considers it should express a view as to the evidence of Dr Varghese, the Consultant Psychiatrist qualified on behalf of the Applicant. In his report of 21 July 2008, the doctor provided a qualified opinion as follows:

"If Mr Gregory has indeed rehabilitated himself from his previous problems with substance misuse, and has recovered from any psychiatric illness he may have had in the past, and has not shown a pattern of sexual boundary violation in the past, then given the reported stability in his life, particularly a stable long term relationship, then I believe the Board could consider favourably Mr Gregory's re-application to be registered as a Medical Practitioner."

Dr Varghese went on to detail conditions to be imposed on such re-registration (Page 5).

47. In fairness to Dr Varghese, the Tribunal had the benefit of a significant amount of material not available to him, and in particular had the benefit of seeing and assessing the Respondent under cross-examination when, as previously indicated, he did not acquit himself well. The Tribunal considers that it was for the Applicant to establish much more than the matters upon which the doctor premised his opinion. In the result, the Tribunal did not agree with Dr Varghese. As to his recommended conditions for restricted practice, the Tribunal viewed these as impracticable and unworkable. On one view they are in fact more indicative of an unsuitability to practice.

48. The Tribunal is comfortably satisfied that the Applicant has not yet obtained a sufficient degree of true insight and understanding of his misconduct such that he should be allowed to resume practice, even with the type of restrictions contemplated. It follows that the Tribunal could not be satisfied that the restrictions contemplated would be sufficient to protect the public. In particular, the Tribunal remains seriously concerned by the nature of the Applicant's continuing self-exculpatory attitude.

49. Having regard to all these matters, the Tribunal considered that the only appropriate order should be to refuse the application for restoration of the Applicant's name to the Register.

50. The objectives of protection of the public and the maintenance of public confidence in the medical profession can, in the Tribunal's view, only be adequately achieved by such an order.

51. The Tribunal also considers that the Applicant should pay the Respondent's costs of these proceedings, on the ordinary basis as defined in the *Civil Procedure Act 2005*.

Statement of Decision

For these reasons the Tribunal orders:

1. The application is dismissed.
2. The Applicant is not permitted to apply for the restoration of his name to the Register for a period of 5 years from today.
3. The Applicant is to pay the Respondent's costs of these proceedings, on the ordinary basis.

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Dr Michael Giuffrida

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Dr Saw-Hooi Toh

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Mr Russell Smith

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Deputy Chairperson, Judge Peter Johnstone