



MEDICAL TRIBUNAL OF NSW

Deputy Chairperson: Judge A. Balla

Members Dr G Abouyanni
Dr K Edwards
Dr J Mair, PhD

Matter no: 40006 of 2007

Complainant: Health Care Complaints Commission

Respondent: Dr Rhafid Al Ramadan

Counsel for the Complainant: Ms G Furness

Respondent: Self Represented

Judgment Date: 26 March 2009

Pursuant to Clause 6 of Schedule 2 to the Medical Practice Act 1992, the Tribunal has made a non publication order in respect of the name of any patient or any material which may identify a patient.

Dr Al Ramadan is a general practitioner. He has been convicted of serious criminal offences and been in custody since September 2006. On 11 December 2006 his registration under the Medical Practice Act ceased because he had not paid the annual registration fee.

The Health Care Complaints Commission now seeks an Order for his deregistration. If the Tribunal makes this Order then Dr Al Ramadan will need to make an Application for Review to be able to apply for re-registration. The Health Care Complaints Commission seeks an Order which would prevent him making an Application for Review for a period after his release from gaol.

What is the basis of the complaints?

The Health Care Complaints Commission asserts that the doctor has been guilty of:

1. unsatisfactory professional conduct; and
2. professional misconduct.

There are two complaints. They both arise out Dr Al Ramadan's conduct in relation to Patient A. The particulars of the first complaint are that on 8 December 2005 Dr Al Ramadan, without Patient A's permission:

1. injected her with diazepam and/or morphine;
2. kissed her;
3. rubbed his hand across her chest, breast and vagina;
4. had sexual intercourse with her

There is also a complaint about his failure to make a record of his consultation with Patient A on 8 December 2005 which was not disputed by Dr Al Ramadan.

The second complaint arises out of the doctor having been convicted of three offences on 28 September 2006. They are related to his conduct on 8 December 2005 and were brought under the following sections of the Crimes Act:

1. Sec 38 – Use chloroform/other overpowering drug to commit/assist to commit indictable offence;
2. Sec 61J(1) – Aggravated sexual assault;
3. Sec 68M(1) – Aggravated indecent assault.

History

Dr Al Ramadan is aged 46 and qualified as a doctor in Iraq. He came to Australia in 2000 and passed the Australian Medical Council Multiple Choice Question examination in 2001. Initially he was limited to work at Mildura Base Hospital and then approved for an area of need position at Broken Hill from 17 February 2004.

Dr Al Ramadan's registration status was changed from area of need to conditional specialist on 16 August 2004 when he became a Fellow of the Royal Australian College of General Practitioners. The only condition on his registration was that he works solely as a general practitioner.

In December 2005 Dr Al Ramadan was working in solo practice in Grenfell. He contacted the NSW Medical Board on 12 December 2005 to tell them that a female patient had claimed that he had sexually assaulted her in his consulting rooms on 8 December 2005.

The Board then received a number of statements including the patient's statement to the police. A Section 66 Inquiry was held on 5 January 2006. At that time the doctor had been charged and granted bail. The Board decided to impose conditions on his registration from 16 January 2006. The principal requirement was that he was to have a chaperone during any examination treatment or interview with a female patient. The matter was also referred to the Health Care Complaints Commission.

The trial took place in September 2006. Dr Al Ramadan was found guilty by the jury on all 3 counts. The NSW Court of Criminal Appeal later summarised Dr Al Ramadan's conduct in the following terms:

The complainant was a 50-year-old female patient of Dr Al Ramadan who said that she had been telephoned by him, asking her to come to his surgery to collect a driver's licence which she had left there on Monday, 5 December. When she arrived, Dr Al Ramadan was there alone and there was a "closed" sign on the door. She entered and collected her licence, and asked Dr Al Ramadan if he had time to give her a cortisone injection for

rheumatoid arthritis in her right knee. Dr Al Ramadan asked her if she wanted something for the pain, to which she assented, but instead of giving the expected local anaesthetic, he administered a stupefying drug, namely diazepam. That was the basis of the first count on the indictment.

At the time she was given the injection, the patient was lying on the examination table in the surgery, having removed her trousers in order to allow Dr Al Ramadan to administer the injection to her knee. The doctor then tried to kiss her, fondled her breasts through her bra and rubbed her vagina through her underpants. The latter two actions constituted the third count of committing an act of indecency in circumstances of aggravation, Dr Al Ramadan being her treating doctor.

The effect of the diazepam was to relax her whole body so that she felt physically drained of strength. Dr Al Ramadan, she said, then climbed onto the examination table, knelt between her legs, having pushed her legs apart with his right knee and had intercourse with her. This was the subject of the second count on the indictment, namely having non-consensual intercourse in circumstances of aggravation, those circumstances again being Dr Al Ramadan's position as her treating doctor.

On 25 January 2007 Dr Al Ramadan was sentenced to:

- 10 years imprisonment with a non parole period of 7 years on the first count,
- 12 years imprisonment with a non parole period of 10 years on the second count; and
- 7 years imprisonment with a non parole period of 5 years on the third count.

After finding that the second and third offences were one episode of sexual criminal behaviour the Judge ordered those sentences to be served concurrently. The third sentence was to be partially concurrent with the others. The effect of the Orders is that the term of imprisonment expires on 27 December 2019 and the non parole period expires three years earlier on 27 December 2016.

Two appeals by Dr Al Ramadan to the NSW Court of Criminal Appeal in relation to his convictions have been unsuccessful. An application for leave to appeal one of those decisions to the High Court was refused on 2 December 2008. Dr Al Ramadan informed the Tribunal that he has received legal advice and intends to proceed with an appeal as to the severity of the sentences.

Unless the appeal as to sentence is successful, Dr Al Ramadan will be in custody until at least 27 December 2016.

Findings

In cases such as these, the Tribunal must be satisfied as to the matters complained of on the balance of probabilities. The Tribunal applies the “Briginshaw” test and has regard to:

“The seriousness of the 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 provided to the reasonable satisfaction of the Tribunal”. Briginshaw v Briginshaw (1938) 60 CLR at 362.

In relation to the first complaint, The Tribunal has received documents including the police brief, a transcript of a recorded conversation between the patient and the doctor on 22 December 2005, the expert reports relied on at trial and the transcript of the trial.

In addition, any findings of fact in the criminal trial and the verdict of the jury can be considered by the Tribunal if the requirements of Schedule 2 Clause 4 of the Medical Practice Act 1992 are satisfied. Firstly the Tribunal is satisfied that the verdict is relevant to these proceedings. Secondly the Tribunal is satisfied that the conduct relied on by the Health Care Complaints Commission in these proceedings is sufficiently similar to the conduct alleged against Dr Al Ramadan at trial.

Accordingly the Tribunal proposes to take into account the verdict of the jury and the findings of the Judge in the criminal trial in considering whether Dr Al Ramadan is guilty of unsatisfactory professional conduct or professional misconduct.

The Tribunal is satisfied that the evidence establishes on the balance of probabilities bearing in mind the principles in “Briginshaw” that Dr Al Ramadan engaged in the conduct as summarised by the NSW Court of Criminal Appeal as set out above.

The Tribunal finds that the doctor’s conduct demonstrates that his judgment was significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience. In addition the Tribunal finds that the conduct was 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. Accordingly in relation to the first complaint the Tribunal finds Dr Al Ramadan is guilty of both unsatisfactory professional conduct and professional misconduct.

In relation to the second complaint The Tribunal is satisfied that Dr Al Ramadan has been convicted of the three criminal offences set out above and that the circumstances of each of those offences render him unfit in the public interest to practise medicine.

Accordingly the Tribunal may, pursuant to section 64 of the Medical Practice Act 1992, direct that Dr Al Ramadan be deregistered. As he is not currently registered, this is in effect an Order that he not be re-registered (section 64 (2)).

The fact that the conduct is sufficiently serious to justify suspension or removal, does not mean that Dr Al Ramadan must be suspended or removed. The legislation makes it clear that the full range of disciplinary powers is available to this Tribunal on a finding of professional misconduct. The discretion of the Tribunal is at large and will depend upon the circumstances of the individual case.

In this case Dr Al Ramadan's actions were an abuse of the privileged position he held in our community. His actions were deliberate and he was aware that the patient had not consented. He has received a lengthy sentence of imprisonment. While he informed the Board that he was sorry and said he had made a mistake he did not admit to the conduct which is the subject of the complaints nor was there any indication that he expressed any concern for the effect on his patient. There have been no other complaints to the NSW Medical Board since he started to practice as a doctor in Australia.

The purpose of disciplinary proceedings is to maintain proper ethical and professional standards in the protection of the community and also to protect the good standing and reputation of the profession. The object of protecting the public includes deterring the practitioner from repeating his misconduct and deterring others who might be tempted to behave in a similar way. Deregistration may be necessary to protect the public from the risk of recurrence of further professional misconduct, deter the practitioner from repeating the misconduct, deter others, maintain the standards of the profession and maintain public confidence in the profession.

The Tribunal has determined that the only Order which can achieve these objects is to formally deregister Dr Al Ramadan from practice as a doctor.

The Tribunal is concerned to ensure that Dr Al Ramadan not be permitted to apply for re-registration for a period after his release from gaol. The Tribunal accepts that it would be a waste of public resources to allow Dr Al Ramadan to apply before he had had an opportunity to address the issues likely to be considered in deciding whether to grant an Application for Review. The Tribunal anticipates this would include all of the usual professional development requirements and his fitness to practise at that time. The Tribunal is of the view that this is addressed by providing for a two year period after the end of his total sentence (and potentially additional time if he is released to parole) before Dr Al Ramadan is permitted to make an Application for Review.

The Tribunal makes the following Orders:

1. Direct that the Respondent be deregistered;
2. An Application for Review of Order 1 may not be made before two years has elapsed from the date of expiry of his total sentence for the offences committed on 8 December 2005 regardless of whether he has been earlier released to parole.
3. No order as to costs.