

**THE MEDICAL TRIBUNAL
OF NEW SOUTH WALES**

No: 40014 of 2008

NEW SOUTH WALES MEDICAL BOARD
Complainant

DR RAJESH DINAKAR
Respondent

Referral and Complaint made under the Medical Practice Act 1992

Medical Tribunal constituted under the Medical Practice Act 1992:

Deputy Chairperson, Judge Peter Johnstone

Dr Saw-Hooi Toh

Dr Vasco de Carvalho

Ms Jennifer Houen

Hearing date: 9 June 2009

Date of Decision: 24 June 2009

REASONS FOR DECISION

The proceedings

1. The New South Wales Medical Board brought these proceedings pursuant to the *Medical Practice Act 1992 (NSW)* ("the Act") against Dr Rajesh Dinakar, a person registered under the Act, by way of:
 - (a) a Referral dated 15 July 2008 under s 65 of the Act in respect of alleged failures by Dr Dinakar to comply with Orders, and various conditions imposed pursuant to those orders, made by the Medical Tribunal on 24 April 2006;
 - (b) a Complaint dated 12 February 2009 under s 50(1)(a) of the Act in respect of five complaints of professional misconduct and/or unsatisfactory professional conduct, alleging that:
 - (i) he practised without being covered by professional indemnity insurance as required by s 19(3) of the *Health Care Liability Act 2001*;
 - (ii) he contravened the Act and otherwise engaged in improper conduct or unethical conduct relating to the practice of medicine: s 36(1).

2. The Particulars of the Respondent's alleged conduct which is the subject of the Referral and the Complaint may be summarised as follows:
 - He practised medicine between May 2001 and April 2008 without approved professional indemnity insurance;
 - He was dishonest in his dealings with the Board and made false representations to it in relation to the nature and currency of his insurance;
 - He failed to provide information required by the Board under s 127C(1) within a reasonable period specified in a notice to him relating to his insurance;
 - He failed to comply with Orders of the Medical Tribunal to complete, by November 2006, certain courses offered by Monash University on "Ethics" and "Issues in General Practice Prescribing", and as to supervision by a registered medical practitioner until the completion of those courses;
 - He failed to provide information required by the Board under s 127C(1) within a reasonable period specified in a notice to him relating to his failure to complete the courses as ordered by the Medical Tribunal, as to steps taken to re-enrol in the next available Ethics course, and as to his failure to provide monthly supervision reports.
3. In a Declaration made on 24 April 2009, the Respondent admitted the substance of the five complaints. In oral submissions the totality of the conduct about which the Medical Board complains was admitted, and it was conceded that each of the matters alleged amounted to unsatisfactory professional conduct: s 36. It was further conceded that there was conduct of a sufficiently serious nature to amount to professional misconduct, that is, it was of a sufficiently serious nature to justify suspension or removal of his name from the Register: s 37. The written submissions also seek to address, in some detail, his failure to comply with the Orders of the Medical Tribunal in 2006, and to explain his other conduct. It was submitted that although his conduct has been serious and unsatisfactory, it was nevertheless insufficient to justify de-registration.
4. The Complainant's position is that there should be an order for deregistration of the Respondent doctor. It submitted that the seriousness and the aggravated nature of the misconduct, combined with his lack of honesty and cooperation in his dealings with the Board, renders the Respondent doctor unfit to practice medicine and calls for his deregistration.
5. The Medical Tribunal exercises its jurisdiction for the protection of the public and of the medical profession. This jurisdiction is protective rather than punitive, and deregistration is not an automatic outcome of professional misconduct even where that conduct is sufficiently serious to justify it: *HCCC v Karalasingham* [2007] NSWCA 267 at [67], particularly where significant steps have been undertaken by the medical practitioner to rehabilitate himself.

6. However, it is clear that deregistration may be required in serious cases of misconduct in order to adequately achieve those objectives by minimising the risk of recurrence, by deterring other practitioners from engaging in such conduct, and by maintaining public confidence in the profession.
7. The Respondent doctor has expressed unequivocally his sincere contrition and remorse. He provides details of subjective circumstances to explain, or at least put in context his conduct in such a way that he asks this Tribunal to view sympathetically the complaints against him.
8. The issue before this Tribunal is whether, given the Respondent doctor's explanations and his extenuating circumstances, the psychiatric evidence, his contrition and his insight into and understanding of his misconduct, and other ameliorating factors, such as his length of service, the Applicant has established, on the balance of probabilities according to the principles in *Briginshaw v Briginshaw*, that in all the circumstances the Respondent's misconduct justifies deregistration, and if so, for what period.

Personal background

9. Dr Dinakar is 61. He was born in Hyderabad where his immediate family still lives. He studied medicine in India, graduating in 1973, and then practised medicine in a hospital for 2 years before migrating to Australia with his wife. They subsequently adopted a daughter in 1980. After arriving in Australia, the doctor worked as a resident medical officer at Lidcombe Hospital till 1978, and then moved to a medical practice at Chester Hill, where he still works. In 1983 he started his own evening practice at Marayong. He works 6 days a week at Chester Hill from 8.00am till 3.00pm, and 5 days a week at Marayong from 4.00pm till 8.00pm.
10. In 1992 he and his wife separated after the relationship failed and became acrimonious. He has been in financial difficulty ever since, and in late 2006 was declared bankrupt. He has suffered from depression and insomnia.
11. Since coming to Australia, the doctor has maintained a close relationship with his family in India, and has returned regularly for visits. He has provided ongoing financial support. His elderly mother died in May 2007 at the age of 94 after a long illness, in the middle of his latest attempt to complete the Ethics Course at Monash, and he flew back to India to be with her in her final days.

The previous misconduct

12. The doctor first came to the attention of the regulatory bodies as a result of inappropriate prescribing of drugs in 1998. Following an investigation, there was an Enquiry in 2001 by a Professional Standards Committee in which he was found guilty of unsatisfactory professional conduct. The doctor was reprimanded and various consequential orders were made including a requirement to undertake certain further training and education courses, directed in particular at the proper prescribing of drugs, including Rohypnol.

13. He failed, however, to comply with those requirements and there was a Section 66 Enquiry by the Medical Board in 2003 into his failure to comply with the conditions imposed by the first Enquiry. Further orders were made requiring the doctor to undertake specified training and education courses.
14. When the doctor again failed to comply with the orders, a Complaint was made to the Medical Tribunal, in 2006. In its Reasons for Determination dated 24 April 2006, the Medical Tribunal referred to the improper prescription by the doctor of four prescriptions for the drug Rohypnol, the subsequent disciplinary history, and the doctor's continuing non-compliance. It noted the concerns expressed by the second Enquiry as to the truthfulness of some of the evidence of Dr Dinakar, the lack of insight displayed by him, his inability to follow things through without constant reminders, and that he had not accepted the need to adhere to the conditions of his registration. The Tribunal noted the further conditions imposed as a result of the second Enquiry and made the following salutary remarks:

“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.”

15. The Tribunal was referred to “glowing references” and given assurances that as a result of changing circumstances and psychiatric counselling, the doctor was “a different person”. Notwithstanding those assurance were “similar to those previously made”, the Tribunal was persuaded to accept those assurances “albeit with reservations”. It concluded that it was in the interests of the community and the profession that the doctor completes the courses mandated and extended to him a further opportunity to fulfil his obligations. It said, in a prophetic conclusion:

“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..”

16. The Tribunal found the doctor guilty of unsatisfactory professional conduct. He was again reprimanded and ordered to complete, by November 2006, two courses conducted by the Department of General Practice at Monash University, namely “Ethics” and “Issues in General Practice Prescribing”.

17. In addition, the Medical Tribunal made an Order that the doctor be subject to the supervision of a registered medical practitioner for the period during which he was completing the courses.
18. The following detailed conditions were imposed as part of the Orders made by the Medical Tribunal:
 - (a) The Practitioner must nominate and advise the Medical Board of 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 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 the 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 the 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 supervision, meetings and reports is to be met by the Practitioner.

The psychiatric evidence

19. Prior to the hearing by that first Medical Tribunal, the Respondent doctor was examined by Dr Howard Napper, a General and Medicolegal Psychiatrist, who saw Dr Dinakar on two occasions, in December 2005 and February 2006. He provided a report dated 23 February 2006 in which he expressed the following views:

“On clinical presentation there was no evidence of clinical depression or anxiety. Dr. Dinakar expressed his ongoing concern about the unresolved matters with the Medical Board and was concerned that he immediately take the steps to complete the required orders. He demonstrated good insight into the problems that he had previously experienced relating to his failure to complete the orders. He volunteered a plan of action that would lead to the successful completion of the required module. There was no disorder of thought form, thought content, perception or cognition...

Dr. Dinakar has unsuccessfully attempted to complete the orders which were related to General Practice Prescribing and has not attempted the General Practice Ethics course. The main reasons that he failed to complete the orders was his extreme pressure of work, fatigue and anxiety symptoms relating to the pressure on him to complete the modules. Dr. Dinakar's failed attempt to complete the modules only served to make him more anxious and this increased anxiety led to ongoing avoidance behaviour and procrastination with respect to completing the modules.

The reasons for Dr. Dinakar's failure to complete the modules are understandable. Dr. Dinakar demonstrates good insight and motivation to get on and complete the modules and the orders imposed by the Medical Board...

In my opinion I consider Dr. Dinakar to be a very genuine person who has deep concern and regard for his patients and is a very professional GP. He is currently taking appropriate steps to complete the orders made by the Medical Board. I consider that Dr. Dinakar should be allowed further time to complete the modules. With respect to this, he will be receiving help, supervision and monitoring and I envisage a successful outcome.”

20. The optimism of Dr Napper was not borne out.
21. He was also examined in 2008 by Dr M Chaudhary, a consultant psychiatrist, and Dr M Shareef Dowla, a consultant neurologist. Both doctors note the enormous stress to which Dr Dinakar has been subjected by the combination of unfortunate circumstances that have beset him. Clinically, however, there is no disorder other than stress and depression. Dr Chaudhary notes some suicidal ideation, but did not consider this serious. There is no psychiatric disorder. Both doctors are sympathetic to Dr Dinakar and support the notion of him being given a further chance to fulfil his obligations. Dr Shareef Dowla has indicated his willingness to act as the medical supervisor. Dr Chaudhary re-examined Dr Dinakar on 24 April 2009 and noted his depression had improved considerably, as had his level of functionality.

The testimonials

22. There are various testimonials and references from a range of respected professionals and patients.
23. It is noted that his referees speak of his good character and dedication to practice. He has also been involved in various charitable activities and fund raising. He continues to provide financial support to his family in India.

The conduct the subject of the Referral and the Complaint

24. It is not proposed to detail the totality of the conduct about which the Medical Board complains, but to set out in summary the salient features of the three main themes: his non-compliance with the requirements of the regulatory authorities and the Medical Tribunal, his failure to effect appropriate professional indemnity insurance, and his dishonesty in his various dealings with the Medical Board.
25. By letter dated 2 May 2006, Dr Dinakar nominated Dr P Valanju as his supervisor. The Medical Board's Conduct Committee approved Dr Valanju as the supervisor and Dr Dinakar was advised accordingly by letter dated 6 June 2006. Dr Valanju provided reports dated 2 July 2006, 12 July 2006, 12 August 2006, but then the reports stopped.
26. In March 2007 the Dr Valanju was contacted by Elizabeth Spratt, the Monitoring Co-ordinator of the Medical Board, and asked for an explanation. Dr Valanju told her that he had been ill, and had been overseas, but that Dr Dinakar was progressing well with his courses. She also rang Dr Dinakar who told her he had completed the "Ethics" course but had not been able to complete the other course in "Issues in General Practice Prescribing", but was proposing to re-enrol in that course at the first available opportunity. He undertook to provide a letter of explanation, but did not. The Medical Board wrote to Dr Dinakar on 11 April 2007 pointing out he was in breach of the orders of the Medical Tribunal. When he again failed to respond, notices under s 127C(1) were sent on 11 May 2007. The doctor then sent a letter dated 27 May 2007:

"This is to inform you that I am in receipt of your letter dated 11/05/07.

I have been in INDIA for the last two weeks to attend to my gravely ill mother who passed away last night.

I have been booked to return to Australia in a week's time.

As such, I would be contacting you as soon as possible when in SYDNEY."

27. But Dr Dinakar again failed to make contact with the Medical Board. Accordingly, on 9 July 2007 contact was made with Monash University and Dr Valanju. Dr Valanju revealed that he had met with Dr Dinakar on two occasions only, but that "the courses were nearly completed and he was working very hard". This was simply not true, and the call to Monash University revealed that the Respondent had misrepresented the position regarding his courses.

