



PROFESSIONAL STANDARDS COMMITTEE INQUIRY

CONSTITUTED PURSUANT TO PART 12 DIVISION 1
OF THE *MEDICAL PRACTICE ACT 1992* to HOLD AN INQUIRY INTO
A COMPLAINT IN RELATION TO

DR YVONNE TAMBYRAJAH

Date of Inquiry:	THURSDAY, 28 MAY 2009
Committee members:	MS GERI ETTINGER, Chairperson (Legally qualified, not a registered medical practitioner) DR JOANNA HELY (Registered medical practitioner) DR ESTHER KOK (Registered medical practitioner) MR RUSSELL SMITH (Lay person)
Legal Officer assisting Committee:	MS DOMARINA AZAD – NEW SOUTH WALES MEDICAL BOARD
Appearance for Health Care Complaints Commission:	MS KATHARINA BUCK
Appearances for Dr Tambyrajah	DR HUGH ADERS AND MS BARBARA VERSACE (AVANT MUTUAL GROUP LIMITED)
Date of decision:	26 JUNE 2009
Publication of decision and non-publication direction:	REFER TO PAGES 21 AND 22 OF THIS DECISION FOR DETAILS

Prior to the appointment the Committee members informed the Board that they had no conflicts of interest or potential bias in relation to this matter.

WRITTEN STATEMENT OF DECISION

DR YVONNE TAMBYRAJAH

SUMMARY

The Professional Standards Committee found the Complaint against Dr Yvonne Tambyrajah proven, and finds that she is guilty of unsatisfactory professional conduct within the meaning of section 36 of the *Medical Practice Act 1992* (the Act). The Committee has ordered that Dr Tambyrajah be reprimanded, that within six months she undertake, at her cost, a course on Ethics at Monash University and that her clinical records be audited.

1. INTRODUCTION

The NSW Medical Board constituted a Professional Standards Committee under the *Medical Practice Act 1992* to inquire into a complaint dated 29 September 2008 against Dr Yvonne Tambyrajah, a registered medical practitioner.

The Complaint brought by the Health Care Complaints Commission (HCCC), concerned two patients who consulted Dr Tambyrajah in 2006.

In summary, the HCCC claimed that Dr Tambyrajah had a conflict of interest in her dealings with the two patients because she recommended the purchase of a particular brand of vitamins/nutritional supplements of which she was a distributor, and accordingly stood to receive a potential financial benefit from that recommendation. She further suggested to one patient that he become a distributor for the products, and accordingly stood to receive a financial benefit if that person became a distributor. The HCCC also claimed the practitioner's medical records were inadequate.

Dr Tambyrajah admitted all the Particulars of the Complaint with the exception of Particular (2), the allegation that she had, in relation to Patient A, failed to properly investigate his reported symptoms.

The HCCC's peer reviewer, Dr Carole Hungerford is a general practitioner of some 37 years experience. Her particular interests are in chronic ill health, environmental disease, and the role of nutrition and complementary medicine. Her written report was also before the Committee.

Dr Tambyrajah's preferred peer reviewer was Dr Walid Jammal, a general practitioner with some 20 years experience. He is a Fellow of the Royal Australian College of General Practice, and is a Clinical Lecturer of the University of Sydney

Faculty of Medicine. He states that his particular interests are in child health issues and men's health.

Dr Tambyrajah, Dr Hungerford and Dr Jammal gave oral evidence before the Inquiry.

The Professional Standards Committee found that the Complaint against Dr Yvonne Tambyrajah is proven. It noted that the practitioner has admitted all the Particulars of Complaint with the exception of Particular (2), which the Committee did not find proven. The Committee has found pursuant to the Complaint brought by the HCCC, that Dr Tambyrajah is guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act. The Committee has ordered that Dr Tambyrajah be reprimanded, that within six months she undertake, at her cost, a course on Ethics at Monash University, and that her clinical records be audited.

Our reasons follow.

2. THE COMPLAINT

The Health Care Complaints Commission of Level 13, 323 Castlereagh Street, Sydney NSW, having consulted with the New South Wales Medical Board in accordance with sections 39(2) and 90B(3) of the Health Care Complaints Act and section 51(1) of the *Medical Practice Act 1992* ("the Act")

HEREBY COMPLAINS THAT:

Dr Yvonne Tambyrajah of 2 Carioca Court, West Pennant Hills NSW 2125 ("the practitioner"), being a medical practitioner registered under the Act,

AMENDED COMPLAINT

has been guilty of unsatisfactory professional conduct within the meaning of section 36(a), (b) and/or (h) of the Act in that:

(i) she has demonstrated that the knowledge and/or judgment possessed, or care exercised, by her in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience and/or,

(ii) she has failed to disclose a pecuniary interest to persons to whom she has recommended a health product at the time of making the recommendation and/or,

(iii) she has contravened the Medical Practice Regulation 2003 and/or,

(iv) she has engaged in conduct relating to the practice of medicine that is improper or unethical.

PARTICULARS

The practitioner is a general practitioner who at all relevant times practised at the Macquarie Shopping Centre Medical Centre in North Ryde, NSW.

1. On or about 17 May 2006 the practitioner inappropriately recommended and supplied health products, namely Market Australia vitamin/nutritional supplements, to a male patient, Patient A, in circumstances where:
 - (a) the practitioner failed to disclose to Patient A at the time of recommending and supplying the products that she had a pecuniary interest in the supply of the products in that she was a distributor of Market Australia products,
 - (b) the practitioner supplied, and sought and accepted payment for the products from Patient A during the professional consultation.
2. On or about 17 May 2006 the practitioner failed to properly investigate Patient A's reported symptoms.
3. On or about 17 May 2006 the practitioner failed to make proper and/or adequate records of her consultation with Patient A as required by the Medical Practice Regulation 2003.
4. On or about 23 May 2006 the practitioner inappropriately recommended health products, namely Market Australia vitamin/nutritional supplements, to a male patient, Patient B. The recommendation of these products was inappropriate in that the practitioner only recommended Market Australia products and the practitioner was a distributor of those products.
5. On or about 23 May 2006 the practitioner inappropriately suggested Patient B become a distributor of Market Australia health products and gave him her business card during a professional consultation in circumstances where:
 - a) the practitioner knew that she stood to receive a potential financial benefit if she sponsored Patient B as a distributor of Market Australia health products,
 - b) the practitioner did not disclose to Patient B that she stood to receive a potential financial benefit if she sponsored Patient B as a distributor of Market Australia health products.
6. On or about 29 May 2006 the practitioner inappropriately recommended health products, namely Market Australia vitamin/nutritional supplements, to Patient B. The recommendation of these products was inappropriate in that the practitioner only recommended Market Australia products and the practitioner was a distributor of those products.
7. On or about 29 May 2006 the practitioner inappropriately suggested Patient B become a distributor of Market Australia health products and gave him her business card during a professional consultation in circumstances where:
 - a) the practitioner knew that she stood to receive a potential financial benefit if she sponsored Patient B as a distributor of Market Australia health products,
 - b) the practitioner did not disclose to Patient B that she stood to receive a potential financial benefit if she sponsored Patient B as a distributor of Market Australia health products.
8. On about 23 and 29 May 2006 the practitioner failed to make proper and/or adequate records of her consultations with Patient B as required by the Medical Practice Regulation 2003.

3. BACKGROUND

Registration

Dr Yvonne Tambyrajah (DOB 5 May 1943) graduated MBBS, from Ceylon University, Sri Lanka, in 1965. She was first registered in New South Wales on 1 April 1971 in the general category.

Dr Tambyrajah is vocationally registered. She has no post graduate qualifications.

Current Employment

Since 2000, Dr Tambyrajah has been employed as a general practitioner at the Macquarie Medical Centre in North Ryde, working three and a half days a week. Dr Tambyrajah also consults with patients after hours at home, seeing approximately five patients per week.

4. STANDARD OF PROOF

The HCCC bears the onus of establishing that Dr Tambyrajah has been guilty of unsatisfactory professional conduct pursuant to section 36 of the Act.

Section 36 of the *Medical Practice Act 1992* provides relevantly:

36 Meaning of "unsatisfactory professional conduct"

(1) For the purposes of this Act, *unsatisfactory professional conduct* of a registered medical practitioner includes each of the following:

(a) **Conduct significantly below reasonable standard**

Any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

The Committee notes the admission of all but Particular (2) of the Particulars of Complaint, and notes that for the Complaint to be proven, the Committee must be reasonably satisfied on the balance of probabilities that Dr Tambyrajah engaged in the conduct complained of, and that this conduct satisfies the statutory definition of unsatisfactory professional conduct.

The Committee is mindful of the Court in *Briginshaw v Briginshaw* (1938) 60 CLR 336, where it stated as follows:

"But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an 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 proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences. ..."

As noted above, the High Court has ruled that decisions by bodies similar to this Professional Standards Committee must not rely on inexact proof, indefinite testimony or indirect inferences, and these principles are applied to this decision.

The phrase "*significantly below*" is not defined in the Act. The relevant Second Reading Speech when this legislation was introduced to Parliament may be noted in that context:

"The first main purpose of the bill is to refocus the Health Care Complaints Commission (HCCC) on investigating serious complaints about health service providers. To achieve this, Commissioner Walker recommended that unsatisfactory professional conduct be redefined so that only significant instances involving lack of skill, judgment, or care will result in an investigation or disciplinary action. Unsatisfactory professional conduct will be defined as.....the reference to 'significantly' in that context may refer to a single act or omission that demonstrates a practitioner's lack of skill, judgment or care, or it may refer to a pattern of conduct. In any individual case, that will depend on seriousness of the circumstances of the case."

The key phrase "*significantly below*" was considered in the recent decision of *Re A Medical Practitioner and the Medical Practice Act* [40010 of 2007] where Judge Freeman stated:

"As a general principle, the use of the term 'significant' may in law be taken to mean not trivial, of importance, or substantial."

In forming our views on the matters before us, the Members of the Committee have taken into account the seriousness of the matters, the inherent likelihood of an occurrence of a given description, and the gravity of the consequence flowing from a particular finding.

In that context, we are mindful that Dr Tambyrajah is a general practitioner with some 38 years experience in Australia, that she is vocationally registered, and that she has no post graduate qualifications. Dr Tambyrajah told us that she has a great and long standing interest in complementary medicine and preventive medicine.

We are mindful that Dr Tambyrajah has previously come to the attention of the NSW Medical Board, and was subject of a Performance Interview conducted on 20 April 2007 in regard to the same two complainants as those before this Committee. The outcome of that Performance Interview, which dealt with "*recommending and selling vitamin based products to patients*" and "*deriving pecuniary benefit from products recommended to patients*", was that the matter be referred to the Conduct Committee of the NSW Medical Board.

We noted that at the time of the Performance Interview on 20 April 2007, Dr Tambyrajah was working in two different medical practices, one being the Macquarie Shopping Centre practice, the source of the two complaints.

The Interviewers recorded that Dr Tambyrajah told them that she was very busy in her practice, and did not have time to sell vitamins in the practice. Dr Tambyrajah's explanation of how she came to sell vitamins to Patient A is that Patient A was "very sick" in mid-May on the day she saw him and recommended Market Australia vitamins to him. She told the Interviewers, and the Committee, that the pharmacy which stocked them was some distance away, Patient A did not have a car, and out of concern for him, she sold him her vitamins she had purchased for her own use to the value of \$100 in her room at the surgery. She added that she refunded the money in full after a complaint was made to her by the patient's mother. Dr Tambyrajah gave similar evidence to this Committee, but the reason for the urgency in supplying the vitamins as told to this Committee, was because Patient A wanted something done for him with minimum delay as he was due to go overseas.

Dr Tambyrajah told us that she obtains the vitamins and other products for her own use, and use by her large family. We noted that Patient A stated in his letter of complaint dated 9 January 2008 that he saw a suitcase full of Market Australia products under Dr Tambyrajah's desk. When Dr Tambyrajah was asked about that at the Inquiry, she said that the patient's recollection could be wrong, and that she had her handbag and doctor's bag under the desk. We do not draw any adverse inferences from this clarification, noting however that the crucial issue was that she sold vitamins to Patient A in her room, that she did not disclose the pecuniary interest she had in supplying the vitamins, and the lack of documentation about any vitamins in her clinical notes. As Dr Tambyrajah did not call Patient A to give evidence as she could have done, we have accepted his statement which remains unchallenged before us.

It is undisputed that Dr Tambyrajah recommended Patient B who presented with hip pain and osteoarthritis, and was taking glucosamine, change to the Market Australia brand because, she said, it had more active ingredients. On two occasions when he attended her practice, she attempted to recruit him to become a distributor by talking to him about the products she distributes, giving him her Market Australia card, and inviting him to her home to discuss becoming a distributor. Patient B complained that Dr Tambyrajah did not disclose that she had a financial interest in recommending the products. It was that which caused him to lose confidence in her, and complain to the NSW Medical Board. He also alleged a number of other things, for example that she suggested to him he might attend her church. Dr Tambyrajah claimed that Patient B's statement contained a number of exaggerations. We are mindful that as Dr Tambyrajah did not call Patient B to give evidence as she could have done, we have accepted his statement which remains unchallenged before us.

We noted from Dr Tambyrajah's letter to the HCCC dated 21 September 2007 that she commenced being a distributor for Market Australia in May 2003. In that letter she outlined the way in which the distributorship works, including the commission structure. In a further letter to the HCCC, dated 21 May 2008 Dr Tambyrajah stated:

"Although I believe in the use of MA products and continue to use these products myself, in light of the Medical Board's concerns, I have decided to resign as a distributor. ... I am no longer a distributor of MA products."

The solicitor for Avant Mutual Group Limited, Dr Tambyrajah's insurer, also wrote a letter to the HCCC dated 21 May 2008 in which she expressed her favourable impressions of Dr Tambyrajah after having met her. The solicitor explained how it was out of concern for the costs of medication in relation to Patient B's long term problems that the practitioner recommended the distributorship. She also stated, presumably as a result of what Dr Tambyrajah told her, that: *"She has not only stopped recommending MA products to patients but has resigned as a distributor."*

When the Committee questioned Dr Tambyrajah about her current activities with Market Australia, she admitted she is currently a distributor, knew details of the joining fee (originally \$99, now \$119), what the *"inaugural pack"* cost (\$600), and told us about the points system (2,400 points gains her \$300). She also told us that her most recent purchase of supplies from Market Australia was in the last couple of days (before the Inquiry), and to the value of \$300 - \$400. That means of course that there were untruths in her letter of 21 May 2008, and in what she told her solicitor, and her peer reviewer, Dr Jammal in regard to her role as a distributor. Dr Tambyrajah told us that she no longer recommends vitamins in the surgery at all, and expressed regret that she had breached NSW Medical Board policy and guidelines.

Dr Jammal provided a report in which he addressed all the Particulars of the Complaint. He also made a list of what he called certain *"assumptions of fact"* upon which he relied. Item 2 in his list records: *"That Dr Tambyrajah has now resigned from Market Australia."* That was, of course, incorrect as Dr Tambyrajah disclosed when questioned by the Committee at the Inquiry that she is currently a distributor.

Dr Jammal also commented that: *"It is widely accepted that it is acceptable to sell products in general practice ... but only if it does not interfere with the doctors (sic) clinical judgement and only if there is no hidden (the Committee's emphasis), pecuniary or conflict of interest. Obviously, one could argue that any financial gain (made by any sale) could be perceived as a conflict of interest, but this is easily managed by informing the patient of the financial connection ..."*. He compared the sale of vaccines to the sale of other products by a doctor.

Dr Jammal also commented on the recommendation of particular brands of products, especially when there has been no rigorous head to head scientific data comparing the products concerned. He stated that the choice was often made on brand familiarity, personal anecdotal experience, discussion forums or low level evidence study data.

We also had before us reports of Dr C Hungerford who stated that she often uses nutritional supplements and feels that there is a legitimate role for them in modern medicine. Dr Hungerford's CV indicates she has written about the topic, and undertaken training in the area of complementary medicine.

Dr Hungerford was concerned that from her consideration of the issues that Dr Tambyrajah acted as if she did not differentiate between the therapeutic value of a nutritional substance and the brand under which it is marketed. Dr Hungerford also commented in her supplementary report dated 28 May 2008, in relation to another brand of products which she regards highly, that: "...doctors should expose themselves to products and seminars run by other equally reputable companies to get a broader view and not become victim to the sort of thing that has happened to Dr. Y. T. I think her decision to resign as a distributor is both commendable and wise." Clearly, Dr Hungerford was not informed that Dr Tambyrajah continues her work as a distributor of Market Australia.

We are satisfied from the oral evidence of Dr Hungerford and her email (supplementary report dated 28 May 2008), in reply to Dr Tambyrajah's advisors that she modified her criticism of the practitioner's conduct in relation to the Complaint after reading a letter from the advisor and from Dr Tambyrajah, both dated 21 May 2008. The modification was in response to what Dr Hungerford perceived as "contrition" by Dr Tambyrajah. We informed Dr Hungerford that any mitigation based on "contrition" could be taken into account by the Committee in its deliberations, but that her role was to assess the Particulars of the Complaint as they related to the practitioner and the relevant patients. Accordingly we have given little weight to the content of Dr Hungerford's supplementary report. We did however have the benefit of her main report dated 22 March 2008 and her oral evidence.

5. CONSIDERATION OF THE PARTICULARS OF THE COMPLAINT

The practitioner is a general practitioner who at all relevant times practised at the Macquarie Shopping Centre in North Ryde, NSW.

Particular (1)

Particular (1): On or about 17 May 2006 the practitioner inappropriately recommended and supplied health products, namely Market Australia vitamin/nutritional supplements, to a male patient, Patient A, in circumstances where:

(a) The practitioner failed to disclose to Patient A at the time of recommending and supplying the products that she had a pecuniary interest in the supply of the products in that she was a distributor of Market Australia products.

(b) The practitioner supplied, and sought and accepted payment for the products from Patient A during the professional consultation.

Dr Tambyrajah

Dr Tambyrajah admitted Particular (1). We accepted from the (written) evidence of Patient A, that Dr Tambyrajah supplied him with vitamins to the value of \$100 for which he paid her in cash, in her room at the Macquarie Shopping Centre surgery. We accept also from Dr Tambyrajah's evidence that she refunded the full amount when Patient A's mother complained.

We noted her explanation which is not documented in the clinical notes, that Patient A was "very sick" in mid-May on the day she saw him, and that she recommended Market Australia vitamins to him. Dr Tambyrajah told us that Patient A was fatigued due to a viral illness which she had diagnosed. Dr Tambyrajah said that the pharmacy which stocked the vitamins she recommended was some distance away, and Patient A did not have a car. Out of concern for him, she said, she sold him vitamins she had purchased for her own use, to the value of \$100, in her room, at the surgery, which she refunded after a complaint was made to her by Patient A's mother. Dr Tambyrajah told us that the urgency in supplying the vitamins was because Patient A wanted something done for him with minimum delay as he was due to go overseas.

Dr Tambyrajah has admitted Particular (1) which deals with both the recommendation and supply of the vitamins, and the non-disclosure of her interest when selling the product to Patient A. We have noted that as recently 21 May 2008, Dr Tambyrajah wrote in a letter to the HCCC, that she disclosed her interest to both patients at the time of making the recommendation. From the evidence we have, we know that that is an untruth.

The Peer Reviewers

We noted Dr Hungerford's comments in regard to Particular (1), being that whilst "quite a few" practitioners sell supplements, she was not comfortable with the practice, adding that selling them from the reception desk (rather than from the doctor's room), was "possibly within the limits of acceptability".

Dr Hungerford was also asked to consider a scenario in which a doctor held shares in Roche which manufactures Tamiflu, and prescribed that drug. Dr Hungerford said that she would be uncomfortable with that practice, and that she would disclose it by putting a notice up on the wall of the surgery. She added that she does not support doctors accepting coffee mugs, lunches or other benefits from drug companies, but that there would be doctors of good repute who would not share that view.

Dr Hungerford was also asked about the practice of doctors' supplying vaccines to their patients for which they routinely charge a small mark-up. Dr Hungerford opined that this was a different scenario because patients needed a prescription for vaccines, and provided the nearest chemist was some distance away, to provide a vaccine was simply a service to the patient. Dr Jammal agreed that vaccines were a different issue from vitamins as Medicare permitted a charge for the supply of vaccines. He added that it was expected there would be a reasonable mark-up on vaccines, e.g. to cover their storage, adding that it would not be usual to inform the patient of the mark-up.

Dr Hungerford stated that the practitioner's actions as indicated in Particular (1) invited her strong criticism. Once the Committee had clarified its position with regard to the contrition Dr Tambyrajah had expressed in later reports, (as indicated in the general introduction above), Dr Hungerford stated that she thought Dr Tambyrajah's conduct in relation to Patient A as indicated in Particular (1) was significantly below the standard reasonably expected of a general practitioner of an equivalent level of training or experience.

Dr Jammal raised the question of whether Dr Tambyrajah would have recommended the same vitamins if she had not had a pecuniary interest in their distribution, and stated that it was therefore the perception of a conflict of interest which was important, and that it was for that reason that Dr Tambyrajah's conduct in relation to Patient A had been unethical.

Dr Jammal stated that he considered Dr Tambyrajah's conduct in relation to Patient A as indicated in Particular (1) was significantly below the standard reasonably expected of a general practitioner of an equivalent level of training or experience.

The Committee

It is undisputed that as alleged, the practitioner failed to disclose to Patient A at the time of recommending and supplying the relevant products that she had a pecuniary interest in the supply of those products in that she was a distributor of Market Australia products. Further it was undisputed that the practitioner supplied, and sought, and accepted payment for the products from Patient A in her room at the Medical Centre during a professional consultation.

We are mindful that both peer reviewers agreed, and the Committee accepts that Dr Tambyrajah unequivocally had a conflict of interest and breached ethical guidelines in regard to the supply of vitamins to Patient A. We reject the notion that the supply of vaccines by doctors to patients, even with the concept of a reasonable mark-up raises the same issues, as they are prescription drugs, and a choice of brand does not arise for the patient.

We accept that there are certain areas about which Dr Hungerford feels more strongly than Dr Jammal, but we are, in considering Particular (1), looking at a very strong conflict of interest situation.

Accordingly we are satisfied that the knowledge, skill or judgment possessed, or care exercised by Dr Tambyrajah in the practice of medicine in regard to Particular (1) was significantly below the standard reasonably expected of a general practitioner of an equivalent level of training or experience who has been in practice in Australia for some 38 years. We find that Dr Tambyrajah has been guilty of unsatisfactory professional conduct in relation to Particular (1).

Particular (2)

Particular (2): On or about 17 May 2006 the practitioner failed to properly investigate Patient A's reported symptoms.

Patient A is a young man who was 20 years old at the time of the relevant consultation in May 2006. He had been seen by another doctor in the same Medical Centre on 23 April 2006. The Centre has a computerised system and the notes of 23 April 2006 recorded:

"Allergy: n/k

Hx

General malaise, running nose and headache. No vomiting. No photophobia.

Afebrile. No haemorrhagic rash. No meningeal sign.

URTI

Encourage fluid, paracetamol pm."

Dr Tambyrajah saw Patient A on his second visit to the Centre on 15 May 2006. Her notes which she conceded are inadequate and breach requirements, read:

"Consultation Notes

lump at ther (sic) back of neck

Examination Notes

ENT

Throat = erythema

Left Occipital = ++

Going

Plan Notes

Pathology Request

Douglass Hanly Moir Pathology

Test(s): Chol/TG/HDL

E/LFT's

Iron Stud/Ferritin

BSL

CRP

FBC/ESR

EBV IgM and IgG

Medications

Avaxim Inactivated Hepatitis A Vaccine Injection 160 antigen units/0.5ml 1 ml daily Qty: 1 RPTs:0"

On 17 May 2006 when Patient A represented, Dr Tambyrajah recorded:

"Consultation Notes

Enlarged lymph node in occiput tender and pain in jaw Blood tests done and shows liver damage due to viral illness still does not feel very well

Plan Notes

Medications

Engerix-B Adult Formulation Injection Injection 20 mcg/ml 1 mL monodose vial 1 ml mane Qty:1 Rpts: 0"

Dr Tambyrajah

Dr Tambyrajah did not record in her clinical notes on that day that Patient A was "very sick", and that she recommended Market Australia vitamins to him. She told us that the pharmacy which stocked those items was some distance away, Patient A did not have a car, and out of concern for him, she sold him her own vitamins to the value of \$100 (at cost price) in her room at the surgery. She said that she refunded the money after Patient A's mother complained. She recorded in her notes dated 24 May 2006 that: "This patient has been instructed on previous consultation that he

*needs to have follow up blood test on his liver due to the grossly (sic) abnormal blood tests and was recommended (sic) B112 supplements from pharmacy which he took for few days and mother was not happy about him taking these and returned the **borrowed supplements...***" (the Committee's emphasis). We noted from the evidence that the supplements were sold to Patient A, and that "**borrowed**" was an untruth. Dr Tambyrajah told us that the reason for the urgency in supplying the vitamins was because Patient A felt very ill and wanted something done for him with minimum delay as he was due to go overseas.

The Peer Reviewers

Dr Hungerford opined that Dr Tambyrajah's lack of documentation works against her, and that she would like to have seen a documented follow-up plan and documentation of medication prescribed. Dr Hungerford opined that she felt Patient A warranted more investigation before Dr Tambyrajah settled on a diagnosis of viral illness. She stated that supplements would not have harmed him, but that she did not support an Energix B injection at that time.

Dr Jammal opined that from the abnormality shown in the blood tests it was most likely Patient A was suffering a common viral illness, and that Dr Tambyrajah had adopted a "*wait and see*" attitude with which he agreed.

The Committee

We have reviewed the evidence and the medical notes relating to Patient A. We are mindful that although Dr Tambyrajah's notes are very minimal, and that is dealt with in relation to the consideration of Particulars (3) and (8) below, we were able to discern that she exercised her clinical judgment and ordered the appropriate tests to be carried out for Patient A, results of which were before us. We have expressed our concerns regarding the recommendation of the Market Australia vitamins and the sale of supplements to Patient A. Whilst that exhibits a lack of good ethical judgment by Dr Tambyrajah, it does not reflect negatively on her clinical management of the case.

We are satisfied from the evidence that Particular (2) is not proven.

Particular (3) and Particular (8)

Particular 3. - On or about 17 May 2006 the practitioner failed to make proper and/or adequate records of her consultation with Patient A as required by the Medical Practice Regulation 2003.

Particular 8. – On about 23 and 29 May 2006 the practitioner failed to make proper and/or adequate records of her consultations with Patient B as required by the Medical Practice Regulation 2003.

Dr Tambyrajah

Dr Tambyrajah admitted that her records were inadequate and breached the requirements of *Medical Practice Regulation 2003*. She told us that the Medical Centre where she works has a good computer system, that her record keeping has improved considerably, and that she is now able to type better, which assists.

The Peer Reviewers

Dr Hungerford characterised Dr Tambyrajah's clinical notes as "entirely unsatisfactory. There is no indication of the doctor's thinking, and no documented follow-up plan." She also commented that they did not indicate any discussion about vitamins. Dr Hungerford stated that the notes fell significantly short of good medical practice, and invited her strong criticism.

In regard to Patient B; Dr Hungerford noted there was no record of leg raising or incapacity, and opined that the specialist report and X-rays did not support the diagnosis of severe osteo-arthritis. She noted that a change of brands of medicines should be documented in the notes, and remarked they were not in this case.

Dr Jammal detailed what was required for medical notes, and opined that Dr Tambyrajah's records were inadequate, and breached the requirements of *Medical Practice Regulation 2003*. In relation to Patient A, he noted amongst others, an absence of important negative findings, no discussion of complementary medication recommended, and no follow-up plan documented. He stated that although the notes and medical records in relation to Patient A were "not the worst" he had seen, they departed significantly from the standard reasonably expected of a general practitioner of an equivalent level of training or experience.

Dr Jammal made similar comments in regard to the medical notes for both consultations Patient B attended. He opined that the medical records in relation to Patient B breached the requirements of *Medical Practice Regulation 2003*. It was curious to us that he then stated in his written report that this departure from the standard did not invite his strong criticism.

The Committee

We accepted the views of the peer reviewers that the *Medical Practice Regulation 2003* requires certain data including amongst others, a history, management plan, and medication of all types to be entered into medical records when a practitioner sees a patient.

It is undisputed, and we accept that as alleged in Particular (3), the practitioner failed on or about 17 May 2006 to make proper and/or adequate records of her consultation with Patient A as required by the *Medical Practice Regulation 2003*.

It is also undisputed, and we accept that on or about 23 and 29 May 2006, the practitioner failed, as alleged in Particular (8), to make proper and/or adequate records of her consultations with Patient B as required by the *Medical Practice Regulation 2003*.

We were mindful in particular that Dr Tambyrajah did not document her advice regarding supplements which she recommended for both patients, that she did not document that she had not only recommended, but sold vitamins to Patient A in her room, and that she did not document why she changed Patient B's glucosamine to the Market Australia brand. Not only were the records therefore deficient, but the conflict of interest situation Dr Tambyrajah found herself in was compounded by the lack of documentation.

