

Schedule 8 drugs" and was to provide a copy of the registration conditions to all practitioners with whom he was associated in any medical practice. In April 2003, the Tribunal modified the supervision requirement, deleted the mentoring condition, and amended the notification condition to require that the respondent provide a copy of the conditions to his principal or practice manager and any practitioner with whom he was in partnership. In July 2004, the Conduct Committee removed any requirement for supervision. The Schedule 4D/8 drug condition (condition 6) and the notification condition (condition 7) remained.

4 Following a complaint about the prescription of antihypertensive medication, in April 2005 a performance interview was conducted. In March 2006, there was a performance assessment. The assessors recommended counselling and reassessment in six months. In August 2006, the respondent was counselled. He was to be reassessed in six months, but in March 2007 the NSW Medical Board received a further complaint. The complaint concerned patient B.

Patient B

5 On 1 July 2003, the respondent began to work at the Mount Druitt Medical Centre. He gave a copy of his registration to the practice manager. That document stated that registration was conditional. The practice manager did not enquire about the conditions. The respondent told the medical director that he was not permitted to prescribe Schedule 4D or Schedule 8 drugs, but he failed to mention that he was not permitted to handle, possess or administer such drugs and he did not provide a copy of the conditions of his registration. In late 2003, the respondent informed his supervisor, Dr Wong, that he had complied with conditions 6 and 7 (Exhibit A.2, tab 10).

6 On 2 January 2005, the respondent first administered pethidine to patient B. Thereafter, he frequently administered pethidine to her. From about September 2006, he administered morphine rather than pethidine. Another practitioner prescribed the pethidine and morphine.

7 On 14 April 2006, Dr H, another practitioner at the Mount Druitt Medical Centre, saw patient B and declined to administer pethidine. The thorough entry recorded by Dr H includes the opinion "*would appear to be dependent/addicted*" and the advice (Exhibit A.1, tab 3):

"I do not think that this patient should receive further pethidine without consultation with the pain management team and confirmation of her clinical needs."

8 On 17 April 2006 when the patient next attended the Centre, she saw the respondent and received an injection of pethidine. Thereafter, she received injections every two or three days and sometimes twice daily.

9 By late June 2006 (the facsimile date on the handwritten letter that Exhibit A.1, tab 10D), the respondent had received a letter from the Sydney Pain Management Clinic stating that patient B had a "*pethidine dependency issue*" and was "*doctor shopping*". A related typed document stated that, within three months, pethidine should be discontinued.

10 Dr H attempted to discuss patient B with the respondent, but the respondent was "*unwilling to engage in a discussion*" and "*(maintained) that as he does not prescribe the narcotics that he administers, it is not his responsibility to provide clinical justification*" (Exhibit A.1, tab 3). It was not until January/ February 2007 that Dr H learned that the respondent was subject to conditional registration.

The Complaint

11 In these proceedings, the complaint is articulated as follows:

- (1) Between 2 January 2005 and 6 March 2007 at the Mount Druitt Medical and Dental Centre the respondent handled, possessed and administered Schedule 8 drugs, namely morphine and pethidine, on approximately 292 occasions, in breach of condition 6.
- (2) Between June 2003 and March 2007 the respondent failed to provide a copy of conditions imposed on his medical registration to the principal or practice manager of a medical practice where he worked as a medical practitioner, namely the Mount Druitt Medical and Dental Centre, in breach of condition 7.

12 In April 2007, the Board conducted a s 66 Inquiry and determined to suspend the respondent. In the course of the Inquiry, the respondent conceded that he had breached condition 6 by administering the Schedule 8 drugs pethidine and morphine intramuscularly to patient B several times a week from 2005 to 6 March 2007, although he had become aware of alleged "doctor shopping" by the patient. He said that it had "slipped his mind" that he was forbidden to administer such drugs. The respondent agreed that he had failed to provide a copy of the conditions of his registration to the medical director, the practice manager or any other practitioner with whom he was working. The respondent maintained that, after receiving the letter from the Sydney Pain Management Clinic, he tried to counsel patient B against the overuse of morphine but she was unreceptive. Coincidentally, on 6 March 2007, a week before the Medical Board received a written complaint, the respondent decided to voluntarily cease administering morphine to patient B.

13 The Board's delegates at the Inquiry stated:

"It is inconceivable that (the respondent) was not fully aware of the restrictions imposed on his practice of medicine.

The failure to comply with the prescribed conditions since 2003 at least is a serious matter and cannot be ignored. The reason given for the failure is not credible. No further conditions can be applied which could give confidence that the practitioner would comply in order to protect the public.

...
On the basis of the evidence before the Inquiry and (the respondent's) presentation during the Inquiry, the delegates do not consider that the public would be adequately protected by conditions ... "
(emphasis added)

14 In July 2007, the respondent answered a letter from the Health Care Complaints Commission by admitting that he had breached condition 6. He said that he had administered pethidine to patient B "when her own doctor was not available during periods when her pain was aggravated". He admitted a breach of condition 7. He said that, as he had been unable to find a copy of the conditions at the time, he had verbally notified his principal and colleagues that there was a restriction on his ability to prescribe drugs.

15 The Health Care Complaints Commission complains that the respondent is guilty of unsatisfactory professional conduct and/or professional misconduct.

16 In September 2009, the practitioner admitted the particulars of the complaint and noted that he had removed his name from the Register. He gave an undertaking that he would not reapply for registration in NSW or elsewhere.

The Issues

- (1) Whether the respondent's conduct amounts to professional misconduct and/or

