



MEDICAL TRIBUNAL OF NSW

**Deputy Chairperson:** Judge A. Balla

**Members** Dr Donald Child, AM  
Dr Guan Yeo  
Ms Anne Collier

**Matter no:** 40013 of 2007

**Applicant:** Mr Chuen Wallis Lam

**Respondent:** NSW Medical Board

**Counsel for the Applicant:** Mr S Barnes

**Respondent:** Ms D Ward

**Judgment Date:** 1 December 2009

On 7 July 2006 a Medical Tribunal found Chuen Wallis Lam guilty of unsatisfactory professional conduct and professional misconduct. His name was removed from the Register of medical practitioners. The Tribunal ordered that he could not make an application for reinstatement to the Register within two years.

Those two years have elapsed. Mr Lam now seeks an Order under section 92 of the Medical Practice Act 1992, the effect of which would be to reinstate his name to the Register.

### **Mr Lam**

Mr Lam graduated in medicine from the University of New South Wales in 1985. In 1987 he moved to Hong Kong where he worked in paediatrics and emergency and trauma in various hospitals. In 1991 he returned to Sydney, working at Westmead and Camperdown Children's Hospitals. In 1993 he started in general practice.

The Pharmaceutical Services Branch commenced an investigation in February 2002 which culminated in the proceedings before the Tribunal in 2006.

### **The function of this Medical Tribunal**

This is an application under section 94A of the Medical Practice Act 1992 which relevantly provides:

- (1) A review under this Division is a review to determine the appropriateness, at the time of the review, of the order concerned.*
- (2) The review is not to review the decision to make the order, or any findings made in connection with the making of that decision, unless significant fresh evidence is produced that was not previously available for consideration, and the appropriate review body is of the opinion that, in the circumstances of the case, the decision to make the order, or any finding on which the decision was based, should be reconsidered.*
- (3) In addition to any other matter that the review may take into account, the review must take into account any complaint made or notified to the Board about the person, whether the complaint was made or notified before or after the making of the order that*

*is the subject of the review and whether or not the complaint was referred under Division 3 of Part 4 or any other action was taken on the complaint.*

Accordingly the issue for this Tribunal to determine is whether the Order made in 2006 is still appropriate.

### **Relevant findings in 2006**

The six grounds of the Complaint which were admitted by Mr Lam in 2006 were the following:

1. He had prescribed anabolic/androgenic steroids to 23 patients in quantities and for purposes not in accordance with therapeutic standards and the relevant Regulation.
2. He had prescribed human growth hormones to 5 patients in quantities and for purposes not in accordance with therapeutic standards and the relevant Regulation.
3. He had prescribed Thyroxine to one patient without proper and sufficient clinical indication.
4. He had failed to make proper records of his treatment of 24 patients.
5. He had failed to include adequate directions for use on prescriptions for restricted substances issued to 23 patients.
6. He had prescribed injectable morphine in 30 mg ampoules to one patient contrary to s 28 of the Poisons and Therapeutic Goods Act 1966.

### **Issues on this Application**

The principal issues addressed by the parties were the following:

- Mr Lam ultimately admitted before the 2006 Tribunal that he had prescribed steroids to patients for body building and cosmetic purposes and not for any medical reason. He says he had complied with their requests for steroids because the patients had been aggressive and intimidating and he had poor communication skills.
- Whether Mr Lam has adequate clinical knowledge to return to practice.
- Mr Lam lied to the Pharmaceutical Services Branch and to the Tribunal in 2006. He falsified his medical records to show that he was treating the patients for erectile dysfunction. He now admits that conduct and says he is remorseful.

## **Issues in dealing with difficult patients**

Mr Lam says that he was unable to be assertive with demanding and intimidating patients because he had been intimidated by them and he had poor communication skills.

Mr Lam says he is now more assertive and confident and could deal appropriately with such requests from patients after having undergone treatment with a psychologist Ms Mukherjee and counselling from his church ministers.

Mr Lam has attended on Ms Mukherjee eight times since February 2008. She has undertaken cognitive behavioural therapy to enable him to recognise and deal with those situations. She has also provided him with techniques for stress management.

Ms Mukherjee has concluded that there has been an improvement in Mr Lam's assertiveness primarily from events he has described to her. For example he has been assertive with a neighbour over a shrub he wanted removed and was able to effectively negotiate the sale of his car. While she concluded that these incidents showed that he had changed, permanent change would need ongoing support from a psychologist.

Dr Westmore, a psychiatrist, said that there were two major issues – Mr Lam's ability to manage not only aggressive patients but also demanding but non-threatening patients such as a patient in obvious distress requesting or demanding inappropriate medication. He believed that Mr Lam would be quite vulnerable to pressure from those patients because he is slightly built, his English language skills are not perfect, he is shy and unassertive and he possibly has some deficiencies in his clinical skills.

Dr Westmore could not predict how any new skills Mr Lam has learned from Ms Mukherjee would be successfully applied to his clinical work. Theoretically, Mr Lam had the capacity to learn from previous experiences. In addition the stress of these proceedings would act as a powerful deterrent against further inappropriate prescribing behaviour. However his insight into his lack of assertiveness being a major problem was relatively recent so Dr Westmore could not be confident that the problem had been fully addressed.

The Tribunal shares these concerns. While the evidence reveals that Mr Lam understands theoretically what led to his behaviour and has managed to effect some change, that does not necessarily mean the behaviour which led to the removal of his name from the Register would not

be repeated. He has only recently gained insight into the issues which gave rise to the conduct which led to the removal of his name from the Register. He has undergone relatively little treatment. The relatively trivial incidents in which he has recently asserted himself do not give the Tribunal confidence that the improvement would necessarily be maintained in a clinical setting.

### **Lack of clinical knowledge**

At the Tribunal hearing in 2006 Mr Lam did use a lack of clinical knowledge as an excuse for some of his prescribing. That excuse has now been superseded by his admission that he was aware that what he was doing was not clinically justified. However the Tribunal still does have some concerns about the standard of Mr Lam's current clinical knowledge. These concerns arise from two separate causes – the fact that he has not practised for three years and his answers to some questions during the proceedings.

Mr Lam did give evidence of attending a course at Monash University entitled "Issues in General Practice Prescribing" an external course designed for general practitioners who have problems with prescribing. He reads journals. He obtains information on the Internet from pharmaceutical company websites. He did complete the continuing professional development requirements between 2005 and 2007.

However Mr Lam has not attended any professional development activities in the last 12 months because of personal and family issues.

Mr Lam said in cross examination that he could not remember the potential risks to the health of patients if they had taken steroids in the quantities that he had prescribed. Dr Westmore said that this was of concern given the reason for the removal of his name from the Register. The Tribunal acknowledges that giving evidence is a very stressful experience and does not draw any firm conclusion from this evidence other than to take it into account when concluding that Mr Lam has not shown that he has maintained his clinical knowledge to the level which the Tribunal considers is required to protect the members of the public.

An issue arose as to whether any deficiency in Mr Lam's clinical knowledge could be addressed by appropriate conditions on his registration. The Board's primary position was that it opposed Mr Lam being restored to the Register. However if the Order was made the Board suggested that he be required to complete the Multiple Choice Questions Course (AMC Bridging Program) before commencing practice. His own counsel suggested that he be restored to the Register and required

to participate in Continuing Medical Education programs covering a range of topics relevant to general practice.

The Tribunal considers that neither of these suggestions would adequately protect the public. Mr Lam's own proposal would fail to protect the public if in fact his clinical knowledge is inadequate as he would immediately be able to start practice as a doctor. The other suggestion would mean that Mr Lam would be restored to the Register subject to passing an assessment of his clinical skills, which may or may not be the course nominated by the Board. That would, in the opinion of the Tribunal, simply confirm that Mr Lam has not shown that he is currently competent to practise medicine. The onus is on Mr Lam to show he has adequate clinical skills at the time his application is heard by a Tribunal. We are not persuaded that he has done so.

### **Findings of the Medical Tribunal on 7 July 2006**

Further issues arise from the gravity of the conduct which led to the removal of Mr Lam from the Register. A review of the history since 2006 leads the Tribunal to the view that he has only recently fully admitted the relevant conduct.

In 2006 Dr Lam did admit the six grounds of the initial complaint, but offered explanations for his behaviour which were tested in the hearing before the Tribunal. The 2006 Tribunal made the following observations and findings.

In relation to Ground 1, Mr Lam said that in nearly all cases he had prescribed steroids to treat the patient's erectile dysfunction. As he did not know much about prescribing steroids he had checked a number of journals and other documents. He was cross examined about the documents which he said he had checked. He ultimately conceded that they either did not provide clinical justification for the prescription of steroids or said it was contra-indicated.

In his evidence Mr Lam claimed that he had treated many of the patients in good faith because they had given him a history of sexual dysfunction. However he conceded in cross examination that he had seen many of those patients over short periods only to prescribe steroids in connection with body building. Mr Lam conceded that that part of his statement had been false.

Mr Lam denied that he had added the words "erectile dysfunction" into the clinical notes of some patients after the investigation by the Pharmaceutical Services Branch had commenced. He said that he had kept a number of different coloured pens on his desk and used them intermittently. The Tribunal did not accept this evidence and found he had embarked upon a deliberate course to

falsely make a note of a diagnosis of erectile dysfunction to justify the prescribing of steroids and had altered his clinical notes to support that explanation.

The Tribunal decision also records a number of other significant concessions in Mr Lam's evidence. For example in his statement he said he had not treated the patients with steroids immediately. In cross-examination he conceded that most of the patients had been prescribed steroids immediately. Mr Lam had said that each patient using steroids had been monitored by blood tests. On cross examination he conceded not all patients had been tested. Mr Lam said he had stopped prescribing when the steroids were no longer of assistance. On cross examination he agreed that, with one exception, the true reason that he had stopped prescribing in April 2002 was the intervention of the Pharmaceutical Services Branch.

In relation to Ground 6, Mr Lam had been appointed the sole prescriber of morphine to one patient by the Pain Clinic at Westmead Hospital. He issued prescriptions for morphine in injectable and oral form at frequencies and in quantities which far exceeded the authority he had been given and contrary to the management plan recommended by the Pain Clinic. Mr Lam gave various excuses

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- (1). He did it with the knowledge of the Pain Clinic at Westmead Hospital.
- (2). The authority had made an error.
- (3). He had constantly informed the three treating specialists in writing of the large doses of injections. He had not received any objection, warnings or disagreement from them.
- (4). He had obtained an authority by telephone from the PBS for the medication prescribed.

In cross examination Mr Lam conceded that explanations (1) and (4) were entirely false. In relation to explanation (3) he conceded that he had written only one letter to one doctor in which he said he had been reducing the morphine dose and that accordingly this explanation was also false.

At the hearing before this Tribunal Mr Lam relied on two statements. The first statement is dated 24 September 2008. In that statement he again repeats the explanation relying on his lack of knowledge in prescribing steroids safely which implies there was some medical basis for the prescription. Mr Lam now concedes that at the time he prescribed the steroids he was aware they were not clinically indicated. In addition the explanation does not volunteer that he was aware he should not have been issuing the prescriptions at the time they were issued.

Mr Lam also says he co-operated with the Pharmaceutical Services Branch without disclosing that he had falsified the patient records before giving them to the PSB.

As recently as April 2009 Mr Lam told Dr Westmore that his lack of knowledge about steroid prescription was at least a partial explanation for his conduct.

In his second statement dated 26 May 2009 Mr Lam admitted that he knew when he wrote the prescriptions that they were not clinically indicated and that he should not have written them, that he had falsified his notes to provide a clinical indication and that he had attempted to mislead the 2006 Tribunal. Mr Lam said he had come to accept that it had been easier to prescribe the drug than confront the patient.

Mr Lam now says he was untruthful because he had been desperate to cover-up his mistakes and was fearful of the consequences. He had been trying to protect his job, his status and family. He apologised, said he has accepted responsibility for his behaviour and has assured the Tribunal that he is now being truthful.

The Tribunal takes into account the gravity of Mr Lam's conduct and the fact that he has only recently admitted the full extent of his conduct.

### **Character references**

There are references before the Tribunal which the Tribunal takes into account which attest to Mr Lam being a devoted family man, a dedicated medical practitioner while he was in practice, who is religious and has met the costs orders against him in the previous proceedings.

### **Findings**

A review Tribunal exercises its jurisdiction for the purpose of protecting the public. This means an applicant must be both competent to practise medicine and of good character. An assessment of good character involves an assessment of an applicant's personal qualities, considering both the applicant's conduct and his or her state of mind.

An applicant for reinstatement is disadvantaged in comparison to an original applicant because he or she must, in effect, displace the reasons for deregistration. Past conduct may be treated as predictive of future behaviour. In seeking to establish that he or she has become fit to be registered the applicant bears a "heavy onus". The review Tribunal *"will require solid and substantial grounds for the conclusion that (the applicant's) standards have changed, (his or her) character has been reformed and that (he or she) will act honourably"*: Zaidi [2006] NSWMT 6 at [42] and [106],

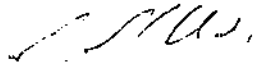
applying principles extracted from Zaidi [1996] NSWMT and implicitly approved in Zaidi v Health Care Complaints Commission [1998] NSWSC 335.

Consequently, Mr Lam bears the heavy onus of satisfying the Tribunal both that he has the good character necessary to practice medicine and that he is competent to do so.

The Tribunal finds that:

- Despite Mr Lam's full admission of his conduct, his remorse and the character references, he has only recently gained insight into his behaviour and has not shown that at this stage he has adequately addressed his issues with assertiveness and stress. This leaves the Tribunal with real concerns that the behaviour is likely to be repeated and that there are no solid and substantial grounds for finding that he has sufficiently reformed to return to practice.
- Mr Lam has not discharged the onus on him to show he has adequate clinical skills to return to practice.

For these reasons the Tribunal declines to make the Orders sought by Mr Lam.



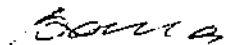
**Dr Donald Child, AM**  
**Member**



**Dr Guan Yeo**  
**Member**



**Ms Anne Collier**  
**Member**



**A Balla DCJ.**  
**Deputy Chair**