

Doctor disqualified for poor medical practice, not maintaining appropriate boundaries and sexualised behavior

Medical Board of Australia v Duck [2017] WASAT 28

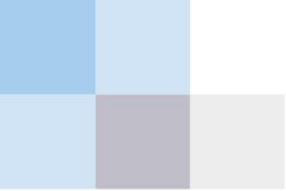
Key Points

- In early 2014, the Medical Board of Australia received a notification alleging that Dr Gregory Duck had bought lingerie for a patient, taken photographs of her while she was wearing the lingerie and inappropriately prescribed the patient medication.
- The Board took immediate action under section 156(1)(a) of the *Health Practitioner Regulation National Law*, by suspending Dr Duck's registration and decided to investigate him under section 160(1) of the National Law.
- The Board referred the matter to the State Administrative Tribunal because it believed that Dr Duck had behaved in a way that constituted professional misconduct.
- The Tribunal held that Dr Duck's conduct amounted to professional misconduct.
- Dr Duck's registration was cancelled and he was disqualified from re-applying for registration for two years.
- The issue of penalty was considered in depth, with the safety and protection of the public being the paramount consideration of the Tribunal.
- This case provides a recent example of how authorities apply the unprofessional conduct provisions of the national law.
- The safety of the community is the Tribunal's main concern when removing a practitioner's registration and can override other considerations.

Background

Dr Duck was consulted by 'Patient A' in 2012. He obtained a history of her methadone use in the first consultation and prescribed Xanax and Quetiapine. Dr Duck continued to treat Patient A until March 2014. Throughout this period, drugs such as Xanax and Valium were prescribed to her, occasionally in her absence. The Tribunal was told that on about 50 occasions over the 18-month period, varying amounts of these drugs were prescribed to Patient A. The system followed by Dr Duck and Patient A was one where Dr Duck would pay for and collect the prescribed medication, store them in a locked drawer in his office and then personally dispense them to the patient.

Throughout the treatment period, Dr Duck bought gifts for Patient A (including clothing and lingerie),



photographed her wearing these gifts and invited her to dinner at various restaurants. On one occasion during the treating period, Dr Duck invited Patient A to attend his hotel room in Perth where she took heroin and collapsed. Dr Duck did not call for medical assistance and remained in the hotel room with Patient A.

In addition, on some occasions during the treating period Patient A consulted with Dr Duck at his residential address rather than his medical practice. When visiting his residential address, Patient A also played music and danced.

The Law


The Tribunal determined that Dr Duck's conduct amounted to professional misconduct. Dr Duck was found to have displayed incompetence, poor medical practice, a failure to maintain appropriate boundaries and sexualised behaviour. Dr Duck's registration was cancelled and he was disqualified from applying for registration as a medical practitioner for two years from the date of the Tribunal's order. In making the determination, the Tribunal took into account what it called Dr Duck's "extensive and serious disciplinary history" for breaches of the Medical Board's Code of Conduct and Guidelines. This previous disciplinary action included drug dependency and an instance where Dr Duck used a torch on his iPhone to conduct a pap smear.

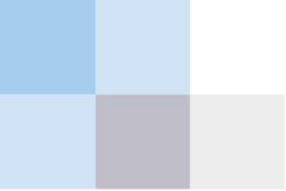
Concepts of standard and onus of proof in relation to serious allegations were considered by the Tribunal. Applying *Briginshaw v Briginshaw* (1938) 60 CLR 336, it was observed that 'in such matters, "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony or indirect references.' The standard of proof for serious allegations involves a question of 'clarity' whereby the degree of satisfaction for the standard of proof may vary according to the gravity of the fact to be proved (*Reifeke v McElroy* (1965) 112 CLR 517). In a case such as this one, where the misconduct allegations are on the more serious end of the spectrum, a high standard clearly applies.

In relation to penalty, the Tribunal reiterated that it will choose the sanction that maximises protection to the public (*Medical Board of Australia and Veetill* [2015] WASAT 124) and its jurisdiction should be protective rather than punitive, with protection running to both the public and profession (*Craig v Medical Board of South Australia* (2001) 79 SASR 545). The fact that the professional boundaries between Dr Duck and Patient A almost completely collapsed demonstrated a clear need to protect the public, despite misconduct only occurring with one patient. Taking into account the strong public interest factors, Dr Duck's registration was cancelled, rather than suspended, which would have been considered less punitive (*Legal Profession Complaints Committee and A Legal Practitioner* [2013] WASAT 37).

Lessons Learnt

This case provides a recent example of how authorities apply the unprofessional conduct provisions of the National Law. Though Dr Duck's conduct quite clearly satisfies 'unprofessional' conduct due to the sexualised nature and involvement of addictive and illicit drugs, the Tribunal's reasoning provides insight





into how these provisions will be applied in broader circumstances where a penalty is called for. The safety of the community is the Tribunal's main concern when removing a practitioner's registration and can override other considerations.

Contact:

Shannon Mony
Partner

T: +61 (0) 8 9265 6016

shannon.mony@hbalegal.com

Will Goodheart
Solicitor

T: +61 (0) 8 9265 6013

will.goodheart@hbalegal.com

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