Doctors, drugs of dependence and discipline: a retrospective review of disciplinary decisions in New Zealand, 1997–2016

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ABSTRACT

AIM: To describe disciplinary cases for inappropriate prescribing of drugs of dependence by doctors in New Zealand, 1997–2016.

METHODS: A retrospective analysis of disciplinary decisions to describe characteristics of cases (setting, drugs, outcome) and doctors (sex, specialty, years since qualification).

RESULTS: There were 25 disciplinary decisions involving 24 doctors. Disciplined doctors were mostly male (19;76%), working in general practice (19;76%), and older (mean 24 years in practice). Pharmacists were the most common source of notification to the authorities (6;24%); medical colleagues reported only four (16%). The alleged misconduct often involved behaviour in addition to inappropriate prescribing. In all cases the doctor was found guilty of professional misconduct. Penalties were severe: six doctors were removed from practice, 11 were suspended, and of the remainder all but one had restrictions on practice imposed. In many decisions there was no patient harm documented.

CONCLUSION: Disciplinary cases for inappropriate prescribing of drugs of dependence by doctors in New Zealand are not common, but the consequences can be dire. The role of discipline in doctors with drug dependence is unclear.

Little is known about disciplinary cases in New Zealand involving doctors and drugs of dependence.[1,2] Disciplinary charges against doctors are heard by the Health Practitioners Disciplinary Tribunal (HPDT), and prior to 2004 by the Medical Practitioners Disciplinary Tribunal (MPDT). A doctor may be found guilty of professional misconduct because of "*any act or omission that, in the judgment of the Tribunal, amounts to malpractice or negligence … or … has brought or was likely to bring discredit to the profession*".[3] The purpose of the disciplinary process is to "*protect the health and safety of members of the public*", not to punish doctors.[3] Nevertheless, it is generally accepted that most doctors perceive the process as punishing, and the process can have punitive consequences. Penalties can include removing the doctor from the register, suspending the doctor for a period up to three years, imposing conditions on practice, costs, and a fine up to $30,000.

Drug dependence is recognised as a disease, not a crime.[4] Drug dependence can have dire consequences for a doctor's personal and professional life, although when treated the prospects of return to work can be good.[4,5] Regular attendance at meetings and ongoing monitoring are encouraged to minimise the risk of relapse.[6]

Drug-dependent doctors may be reluctant to seek help for fear of losing their licence to practice. Colleagues are required by law to notify the Medical Council if they believe a doctor "*is unable to perform the functions required for the practice of his or*

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her profession because of some mental or physical condition" (s.45), but colleagues may also be reluctant to report.[3,7] The Medical Council manages most doctors with drug dependence through its Health Committee.[8] Some doctors are referred for discipline, not for drug dependence but for offences such as inappropriate prescribing, falsification of the clinical record and forging a colleague's signature.

The role of discipline in drug dependence is not clear. We sought to describe disciplinary cases for inappropriate prescribing of drugs of dependence by doctors in New Zealand, with a view to understanding risk factors and outcomes.

Methods

Data source

In New Zealand, all written decisions for medical practitioner disciplinary proceedings are published on the websites of the Disciplinary Tribunals (MPDT and HPDT).[9,10] Our data came from the MPDT website 1997–2005, and the HPDT website 2004–2016. Available data included the full texts of the decisions, barring redacted names and identifying details in cases where the doctor was granted name suppression, including the charge, evidence submitted by prosecution and defence, the Tribunal's decision and penalties imposed.

Data collection

SM examined all decisions on the websites to identify cases where the alleged misconduct included inappropriate prescribing of drugs of dependence. SM collected data from these decisions, including the characteristics of the doctor (sex, specialty, years since qualification, prior knowledge by authorities) and characteristics of the case (setting, drugs, means of detection, disciplinary proceeding outcomes). Missing demographic data on named doctors was supplemented with data from the Medical Council of New Zealand's website, where available.[11]

Data analysis

The analytical approach to these data was mainly descriptive as we aimed to determine the content of the decisions and their ability to inform about risk factors and outcomes.

Results

Over the 20 years 1997 to 2016, there were 236 disciplinary cases against doctors, 25 of which included inappropriate prescribing of drugs of dependence (11%). Over the eight years 1997–2005 the MPDT heard 143 charges against doctors (18 per year on average), five involving inappropriate prescribing (3%); and over the 12 years 2004–2016 the HPDT heard 93 cases (eight per year on average), 20 involving inappropriate prescribing (22%). In all cases the doctor was found guilty of professional misconduct (100%).

Characteristics of cases

The alleged misconduct was diverse and often involved misconduct in addition to inappropriate prescribing, including sexual relations with patients and forging a colleague's signature. It was not always clear in the decision for whom the inappropriately prescribed drugs were intended, although in some cases it was clear the drugs were not for self-use. The prescriptions were usually made out for patients, family or self. The prescribed drugs included opioids (17;68%) (pethidine (8), codeine (7), morphine (4), dextropropoxyphene, oxycodone, tramadol and fentanyl); benzodiazepines (12;48%); pseudoephedrine (2); and sibutramine (1).

Pharmacists were the most common source of notification to the authorities (6;24%), followed by reporting from medical colleagues (4;16%). Other sources of notification were the patient or family (3), patient's caregiver (1), police (2) and patient death (1). It was not possible to determine the source of notification in eight cases (32%). In some decisions it was clear the doctor was already known to the authorities: in seven cases (involving six doctors) the doctor was being monitored by the Medical Council's Health Committee (28%); in one case the doctor had previously appeared before two separate tribunals for unrelated matters (HPDT 05/27D; 06/32D; 10/145P); and in another a doctor had previously been cautioned by the Medical Council for prescribing to those close to her but not disciplined (16/348P). One doctor faced two separate charges for inappropriate prescribing of drugs of dependence six years apart (MPDT 00/63C; HPDT 06/29P).

Patient harm or the potential for harm was mentioned in some decisions, usually as a consequence of inappropriate prescribing or inaccurate patient records (for example when a prescription was made out for but never intended for a patient). Other decisions documented that there was no patient harm or safety concerns.

Characteristics of doctors

Twenty-four doctors were involved in the 25 cases. Most doctors were male (19;79%). Most were working in general practice (19;79%); and there was one each in anaesthesia, internal medicine, registrar, medical officer, house officer and not available. Most doctors were on the general register (17;71%), and seven were on the vocational register (general practice 6; anaesthetics 1). Most doctors had been in practice a long time, with a mean of 24 years between qualification and discipline (range 2 to 36 years). The year of qualification was not available in seven cases.

Penalties

The diversity of misconduct is reflected in the diversity of penalties imposed by the tribunals, as set out in Table 1. Six doctors were removed from the register (24%); 11 doctors (44%) were suspended for between three and 24 months; and most of the remainder had conditions imposed on practice. Conditions included supervision (20); prescribing restrictions (12); drug urine or hair monitoring (8); counselling and/or being part of a support group (6); enrolling with a general practitioner (4); re-training, for example in record keeping (5); abstaining from drugs and/or alcohol (4); and practising in an approved practice (4) or a group practice (3). In nearly all cases the tribunal censured the doctor and imposed costs of 6% to 50%. In nearly half of cases the tribunal also fined the doctor, with fines varying from $5,000 to $20,000.

In seven cases (28%) the doctor was given name suppression, one on appeal. The tribunals were not always consistent in their reasoning. For example, in White (MPDT 98/36C) the tribunal denied name suppression in part because there was already extensive publicity about the case, but in Dr K (MPDT 00/63C) the tribunal allowed name suppression in part because previous publicity reduced the need for further publicity to protect patient safety (but also to support Dr K's rehabilitation). When Dr K faced a second disciplinary charge for inappropriate prescribing, he was denied name suppression since the previous suppression had failed to prevent relapse and reoffending (Keshvara HPDT 06/63P). In nine cases (36%) the doctor appealed all or part of the tribunal's decision, in particular concerning name suppression or conditions on practice.

Table 1: Disciplinary decisions involving inappropriate prescribing of drugs of dependence in New Zealand, 1997–2016.

Case	Charge	Penalty			
		Registration	Conditions	Fine	Costs
MPDT 98/36C White, Gen	Prescribing to patient; excessive triazolam	Cancelled	-	0	40%
MPDT 00/63C Dr K, Voc, GP	Forged colleague's personal stamp on prescriptions for pethidine, morphine	-	Y	0	45%
MPDT 01/74C van Rhyn, Gen	Prescribing for self; zopiclone	-	Y	$5,000	25%
MPDT 05/127C Dassanayake, Gen	Gave patient clonazepam and temazepam without a prescription; sexual relationship with patient	Cancelled	-	$5,000	0
MPDT 05/128C Laubscher, Voc, Anaes	Forged signature on prescriptions for pethidine	-	Y	0	25%
HPDT 04/03P Nuttall, Gen	Prescribing midazolam and dihydrocodeine to patient, in sexual relationship with patient	Cancelled	-	0	$10,000

Table 1: Disciplinary decisions involving inappropriate prescribing of drugs of dependence in New Zealand, 1997–2016 (continued).

HPDT 05/08P Brock-Smith, Gen	Prescribing to restricted persons; diazepam and temazepam	-	Y	$7,000	30%
HPDT 06/29P Keshvara, Voc, GP	Forged signature on prescriptions for dihydrocodeine	Suspended 12m	Y	0	33%
HPDT 06/36D Patel, Voc, GP	Prescribed zopiclone to patient, in sexual relationship with patient	Suspension 24m	Y	$10,000	50%
HPDT 06/44P Cullen, Voc, GP	Prescribing pseudoephedrine	Cancelled	-	$15,000	34%
HPDT 07/76D Dr E, Voc, GP	Prescribed paradex to patient in de-facto relationship with	-	Y	$7,500	0
HPDT 07/80P Aitcheson, Gen	Prescribed to patients for self; pethidine	Suspension 12m	Y	$10,000	40%
HPDT 08/102P MacDonald, Voc, GP	Prescribing morphine to patient, in sexual relationship with patient	Suspension 9m	Y	0	47%
HPDT 10/145P Wilson, Gen	Prescribing pseudoephedrine, alprazolam and paradex	Cancelled	-	$20,000	50%
HPDT 10/155P Dr E, Gen	Forged prescriptions to get sibutramine for self	Suspension 3m	Y	0	10%
HPDT 11/197P Dr S, Gen	Prescribing to patients with dependency; pethidine, morphine, codeine, diazepam, triazolam and nitrazepam	-	Y	0	30%
HPDT 11/201P Wong, Gen	Prescribing to restricted persons; benzodiazepines	-	Y	$7,000	30%
HPDT 14/272P Dr T, Gen	Prescribing to self, family, and patients; codeine, lorazepam, zopiclone	-	Y	0	15%
HPDT 15/310P Dr Y, Gen	Prescribing to patients, collected for self; codeine	Suspension 3m	Y	0	30%
HPDT 15/315P Hodgson, Gen	Prescribing to patients and family; dihydro-codeine, diazepam, zopiclone and triazolam	Suspension 3m	Y	0	15%
HPDT 15/320P Thorne, Voc, GP	Prescribing to patients with history of dependence; oxycodone, morphine, tramadol, codeine, clonazepam, triazolam, clonazepam, zopiclone, dihydro-codeine, diazepam	Suspension 6m	Y	0	35%
HPDT 15/335P Dr N, Gen	Forged signatures in controlled drug register to obtain pethidine, morphine and fentanyl	-	Y	$8,000	30%
HPDT 16/348P Craig, Gen	Prescribing to patients, family and self; triazolam and zopiclone	-	Y	0	30%
HPDT 16/351P Cooper, Gen	Prescribing to patients to stock practice	-	N	0	6%
HPDT 16/353P Kleszcz, Gen	Prescribing to patient; pethidine, diazepam and nitrazepam	Cancelled	-	0	26%

Discussion

We identified only 25 disciplinary decisions involving inappropriate prescribing of drugs of dependence over the 20 years 1997–2016. One of the 25 cases was for repeat offending by the same doctor. While the HPDT heard fewer cases per year than the MPDT,[12] a greater proportion involved inappropriate prescribing. In all cases the doctor was found guilty of professional misconduct. The consequences were dire, often spelling the end of a doctor's career. Most disciplined doctors were men, working in general practice, and had been in practice a long time. Patient harm was not a strong feature. It may be that drug-dependent doctors pose a greater risk to themselves than they do the health and safety of the public.

Few cases came to the attention of the authorities via notification from medical colleagues (16%). Doctors may be unaware of drug dependence in their midst, unaware of their duty to report, or unwilling to report. It may be that the threat of discipline acts more as a deterrent to reporting than to drug dependence.

Our findings are consistent with those reported elsewhere.[13–15] The study provides an insight into the disciplinary consequences of inappropriate prescribing of drugs of dependence in New Zealand, but provides no indication of the extent of drug dependence in doctors. In some disciplinary decisions it was clear the drugs were not for self-use.

The paucity of disciplinary cases and diversity of misconduct mean it is not possible to generalise, but it appears that discipline is used as the last resort for dealing with drug-dependent doctors. Doctors with drug dependence should be encouraged to get help. The Medical Council's Health Committee has an important role to play here. The role of discipline is unclear. Further work is needed to understand the barriers and enablers to reporting by colleagues, to understanding the extent of the problem in New Zealand, and to identifying systems that best manage drug dependence in doctors.

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REFERENCES:

1. Fry RA, Fry LE, Castanelli DJ. A retrospective survey of substance abuse in anaesthetists in Australia and New Zealand from 2004 to 2013. Anaesth Intensive Care. 2015; 43:111–7.
2. Elkin K, Spittal M, Elkin D, et al. Doctors disciplined for professional misconduct in Australia and New Zealand, 2000–2009. Med J Aust. 2011; 194:452–6.
3. Health Practitioners Competence Assurance Act 2003, Stat. 48 (NZ). http://www.legislation.govt.nz/act/public/2003/0048/latest/DLM203312.html?search=ts_act_health+practitioners_resel&p=1&sr=1 (accessed 15 Oct 2012).
4. Mayall RM. Substance abuse in anaesthetists. BJA Education. 2016; 16:236–41.
5. Dyer C. Julien Warshafsky: how this doctor died and what it tells us about the system that failed him. BMJ. 2018; 361:k2564.
6. Domino KB, Hornbein TF, Polissar NL, et al. Risk factors for relapse in health care professionals with substance use disorders. JAMA. 2005; 293:1453–60.
7. Medical Council of New Zealand. What to do when you have concerns about a colleague. 2010. http://www.mcnz.org.nz/assets/News-and-Publications/Statements/Concerns-about-a-colleague.pdf (accessed August 2018).
8. Medical Council of New Zealand. Health concerns. Available at: http://www.mcnz.org.nz/fitness-to-practise/health-concerns/ (accessed: August 2018).
9. Medical Practitioners Disciplinary Tribunal. Available at: http://www.mpdt.org.nz (accessed: 15 Aug 2018).
10. New Zealand Health Practitioners Disciplinary Tribunal. Available at: http://www.hpdt.org.nz (accessed: 15 Aug 2018).
11. Medical Council of New Zealand. List of registered doctors. Available at: http://www.mcnz.org.nz/support-for-doctors/list-of-registered-doctors/ (accessed: 15 Aug 2018).
12. Wallis KA. New Zealand's 2005 'no-fault' compensation reforms and medical professional accountability for harm. N Z Med J. 2013; 126.
13. Mendelson D. Disciplinary proceedings for inappropriate presciption of opioid medications by medical practitioners in Australia (2010–2014). J Law Med. 2014; 22:255–79.
14. Mendelson D. Disciplinary proceedings against doctors who abuse controlled substances. J Law Med. 2015; 23:24–40.
15. Cadman M, Bell J. Doctors detected self-administering opioids in New South Wales, 1985–1994: characteristics and outcomes. Med J Aust. 1998; 169:419–21.