

Professional Misconduct (Med11/172)

Charge

The Professional Conduct Committee (PCC) brought a charge against Dr Christopher Bevan Paltridge (the Doctor) the particulars of the charge were:

1. Between May 2004 and April 2010, the Doctor signed prescriptions for bio-identical hormones to treat patients with symptoms of menopause, in circumstances which departed significantly from the usual prescribing practice by signing prescriptions without having consulted with and/or examined the patient.
 2. Between May 2004 and April 2010, the Doctor failed to verify and/or failed to ensure that his clinic nurse verified, a patient's medical and family history and clinical details before prescribing bio-identical hormones to treat symptoms of menopause.
 3. Between May 2004 and April 2010, the Doctor failed to provide patients with information regarding pharmacy funded and/or part funded and/or part funded medication to treat symptoms of menopause so as to provide patients with all the information they want or need to know about their treatment options (including the cost of treatment).
- 4 & 5 On or about 28 January 2010 and 29 April 2010, the Doctor was responsible for false and/or misleading statements contained in an advertisement in the New Zealand Herald relating to the New Zealand Men's Clinic (Clinic). In particular, the advertisement claimed that:
- (a) the Clinic has a success rate of 95% in treating erectile dysfunction; and/or
 - (b) staff of the Clinic were experts in the area of erectile dysfunction, premature ejaculation and low libido without being registered with the Medical Council in an appropriate vocational scope; and/or
 - (c) the Clinic does not charge a repeat prescription fee when in fact it charges an all inclusive fee including the cost of a prescription.
- 6 & 7 On or about 28 January 2010 and 29 April 2010, the Doctor was responsible for statements contained in an advertisement in the New Zealand Herald relating to the Clinic which implied that treatment from a patient's general practitioner for erectile dysfunction may not be as effective as treatment from the Clinic.

8. On or about 17 October 2010, the Doctor was responsible for false and/or misleading information contained on the Clinic's website. In particular, the website claimed that:
 - (a) the Clinic has a success rate of 95% in treating erectile dysfunction; and/or
 - (b) staff at the Clinic (including the Doctor) were specialists in the area of erectile dysfunction, premature ejaculation and low libido without being registered with the Medical Council in an appropriate vocational scope.

The PCC charged that each particular, either separately or cumulatively, amounted to professional misconduct.

Finding

The Tribunal found particulars 1, 2, 4(a), 5(a), 6, 7 and 8 were established.

The Tribunal was satisfied the established particulars 1 and 2 amounted to negligence, warranted discipline and therefore constituted professional misconduct.

When considering the established particulars 4 to 8 the Tribunal considered the most serious breach related to the assertion of a 95% success rate in treating erectile dysfunction. The Tribunal considered the other established breaches less serious. Taken together the Tribunal was satisfied they amounted to the bringing of discredit to the profession.

The Tribunal found particulars 4 to 8 were borderline for a threshold finding, but when considered cumulatively with particulars 1 and 2, were sufficiently serious as to warrant discipline.

Background

In 2000 the Doctor commenced work as a GP for the New Zealand Men's Clinic Ltd (Men's Clinic) and later acquired a 50% shareholding in the company. The other shareholder was based in Sydney from 2000.

In 2004 the Doctor began the prescribing of medications for the treatment of menopause.

The Tribunal noted that an important contextual background fact related to the publication of the Women's Health Initiative study in 2002. As a result of the study GP's became more vigilant in monitoring patients on hormone replacement therapy (HRT). The study received significant publicity with medical practitioners and women became apprehensive about taking conventional HRT. Women became vulnerable because of this and sought alternate sources for managing menopause.

Reasons for Findings

Particular 1

The Doctor accepted that he did not consult with or examine patients directly. The Doctor accepted that he should have been conducting face to face consultations.

There was evidence that the nursing staff were responsible for conducting patient consultations, both those taken initially and those undertaken for follow up purposes. The Doctor stated that protocols had been designed for the nurses to ensure patient safety. However, the Tribunal heard expert evidence that the protocols were not evidence based, nor did they comply with the best practice guidelines.

In two of the four case histories that were before the Tribunal, women were prescribed progesterone when they were recorded as having had a hysterectomy. The Doctor explained he would not have expected such a patient to be prescribed progesterone because without a uterus there is no medical indication for its use. The fact progesterone was prescribed, demonstrated a significant weakness in the process that was adopted, because face to face consultations would have been more likely to have avoided this problem.

The Tribunal was satisfied the particular was established.

Particular 2

The Doctor accepted that on many occasions there was a failure to verify a patient's medical history, family history and clinical details in writing prior to prescribing HRT medications. The Tribunal heard expert evidence stating that the failure to verify such clinical details in writing was a breach of professional standards.

The Tribunal was satisfied the particular was established.

Particular 3

An application to amend particular 3 had the effect of witnesses not being cross examined on the language of that particular. The Tribunal considered it inappropriate to allow the amendment.

The Tribunal found the particular in its original form vague, as it did not capture the essence of the problem, which was to do with the distinction between Pharmac funded products and compounded products (that have not been subjected to the same research and safety checks).

Therefore, the Tribunal was not satisfied particular 3 as originally laid was established.

Particulars 4 and 5

Both of these particulars relate to two identical advertisements which appeared in the New Zealand Herald on two different dates. There was no dispute that the Doctor was

the responsible medical practitioner for their publication. The Doctor accepted in hindsight, that reference to the 95% success rate might be misleading.

The advertisement included a statement that the Clinic had a “*broad range of safe and effective treatments: their success rate is 95%*”. The Tribunal heard expert evidence which stated that the claim of a 95% success rate was misleading and in breach of the relevant standards and the statement to that effect in the advertisements was false and misleading. The Tribunal was satisfied sub-particulars 4(a) and 5(a) were established.

The Doctor advertised that staff at the Clinic were experts in the areas of erectile dysfunction, premature ejaculation and low libido, without being registered with the Medical Council of New Zealand in an appropriate vocational scope. By 2010 the Doctor had been involved, as a major area of his practice, for some 10 years in the issues of erectile dysfunction, premature ejaculation and low libido.

However, expert evidence stated that experience alone does not necessarily create expertise and that true expertise should involve training with someone with expertise in the field and who was ideally being mentored.

The Tribunal concluded that the word “expert” is subjective and open to being misunderstood. They further noted that the charge did not refer to the main problem raised by the advertisement, which was the assertion that staff at the Men’s Clinic are “...experts in this area nationwide”. That statement was misleading; but the particular did not charge the Doctor with that particular alleged misleading statement. Therefore sub-particulars 4(b) and 5(b) were not established.

The Doctor stated for patients who require a repeat prescription, they only paid for the cost of medication, and not a fee for the prescription as such. The Tribunal agreed that the “repeat prescription fee” was not charged and sub-particulars 4(c) and 5(c) were not established.

Particulars 6 and 7

These two particulars alleged that statements made in the New Zealand Herald advertisements implied that treatment from a patient’s general practitioner for erectile dysfunction may not be as effective as treatment from the Clinic.

Both *Good Medical Practice* and *Statement on Advertising* provide that practitioners should not make comparisons between the quality of their services and the quality of services provided by colleagues. The Tribunal heard expert evidence that stated the advertisement implied that general practitioners may not be able to successfully treat patients with erectile dysfunction and that the implication was not justified and that it is not acceptable to imply that.

The Tribunal found that on the face of it, the advertisements did make a comparison with services offered by a GP and accordingly the factual basis for particulars 6 and 7 was established. The Tribunal noted they were minor breaches.

Particular 8

The Men's Clinic website stated that at the Men's Clinic there was a "95% success rate" and that "over 95% of our patients achieve success after one short visit..." and that "over 95% of our patients can be treated successfully with medication alone..."

The Tribunal, found these statements misleading therefore this sub-particular 8(a) was established.

The website also claimed staff, including the Doctor, were specialists in the areas of erectile dysfunction, premature ejaculation and low libido. However the Doctor was not registered with the Medical Council in an appropriate vocational scope. Expert evidence was that reference to "specialist medical experience" implied the Doctor was registered in a specialist vocational scope.

The website described the Doctor's qualifications; there was no reference to the Doctor being a specialist. However, the Tribunal found, that members of the public, who do not have an understanding of the medical professions use of the word "specialist" could derive the impression from the website that the Doctor is a "specialist" in the sense in which a medical professional uses it. For those persons the use of the word would be misleading.

The Tribunal found this sub-particular 8 (b) established.

Penalty

The Doctor was censured. The Tribunal expressed its disapproval as to the significant breaches of professional standards, particularly regarding the prescribing of bio-identical hormones for the treatment of menopause.

The Doctor was ordered to pay 50% of the costs of the PCC and the Tribunal.

The Tribunal recommended to the Medical Council of New Zealand that a copy of its findings be made available to those involved in the various processes relating to the evaluation of the Doctor's competence. The Tribunal further recommended that the Medical Council give urgent consideration to a direction that the Doctor undertake an education programme with regard to HRT treatments and that he be directed to attend an HRT clinic for educative purposes;

The Tribunal directed that a copy of its decision be placed on the Tribunal's website. The Tribunal further directed that a notice stating the effect of the decision be published in the New Zealand Medical Journal.

Appeal

On appeal and by consent, the High Court reduced the Doctor's order of costs to 35% rather than the 50% set by the Tribunal. (*Paltridge v PCC* (High Court, Auckland, CIV-2011-404-003658, 27 October 2011, Ellis J))

The full decisions relating to the case can be found on the Tribunal web site at www.hpdtnz.org.nz
Reference No: Med11/172