

## Health Insights

### VCAT confirms that disciplinary consequences may befall practitioners who treat their own family

In 2019 we have seen an increased focus by AHPRA and the National Boards on ensuring the observance of professional boundaries between registered health service providers and their patients. In our experience, investigations into professional boundary transgressions are most commonly triggered when a romantic relationship between the practitioner and the patient turns sour. However, these are not the only types of relationships which have the potential to attract the unwanted attention of the regulation agency - professional boundaries may also be called into question when health practitioners treat their own family members.

In Victoria, the *Drugs, Poisons and Controlled Substances Regulations 2017 (Vic)* ('Regulations') provides that a medical practitioner must not issue a prescription for a Schedule 4, 8 or 9 poison unless the prescription is for the medical treatment of a person other than the practitioner. It is silent on the matter of prescribing to a family member, which gives the preliminary impression that such prescribing is lawful. However, the Regulations do not provide the complete picture on this issue from the perspective of a doctor's professional obligations, as was recently explored in the VCAT decision of *XDH v Medical Board of Australia (Review and Regulation)* [2019] VCAT 377 (the full decision is available to read [\[here\]](#)).

In that case, XDH challenged the decision of the Medical Board to place conditions on his registration not to provide treatment to his spouse or family members. 'Treatment' was defined to include consultation, interview, examination, assessment, medical advice and writing prescriptions.<sup>1</sup> The decision arose out of findings that XDH had been providing treatment, including writing prescriptions, for his wife who was suffering from Alzheimer's disease. This was in circumstances where XDH was, together with his two daughters, also making decisions in relation to his wife's medical care.

To assist them in this matter, the VCAT members turned to the Medical Board of Australia's code of conduct titled "Good Medical Practice: A Code of Conduct for Doctors in Australia" (March 2014) (the "Code"). By way of a reminder, the Code is admissible against a medical practitioner by the Board as evidence as to what "constitutes proper professional conduct or practice"<sup>2</sup> of the health profession.

Clause 3.14 was of particular relevance here, and states:

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<sup>1</sup> *XDH v Medical Board of Australia (Review and Regulation)* [2019] VCAT 377, paragraph 1.

<sup>2</sup> *Health Practitioner Regulation National Law (Vic) Act 2009*, section 41.

*Whenever possible, avoid providing medical care to anyone with whom you have a close personal relationship. In most cases, providing care to close friends, those you work with and family members is inappropriate because of the lack of objectivity, possible discontinuity of care, and risks to the doctor and patient. In some cases, providing care to those close to you is unavoidable. Whenever this is the case, good medical practice requires recognition and careful management of these issues.<sup>3</sup>*

The members said that this clause should be read “as a whole and given its natural and ordinary meaning<sup>4</sup>”. In their view, the contemplation is that “a medical practitioner should only treat a family member when it is unavoidable....it need not be shown, that harm has arisen, or will arise, if a medical practitioner treats his family member, the rule is about a particular relationship and a response to it.<sup>5</sup>”

VCAT considered that XDH’s provision of treatment to his wife was unsatisfactory and failed to meet his obligations under the Code. They were particularly influenced by the fact that his wife was suffering from dementia and that XDH had been performing a dual role as both treater and decision maker, which meant that there was an inherent risk of a lack of objectivity here<sup>6</sup>.

Interestingly, the members did not even consider it permissible for XDH to, as he suggested, continue to treat his wife in conjunction with a colleague who would maintain some oversight. In their view, “such an arrangement...would be contrary to the Code and could indeed cause some confusion between the two treating doctors<sup>7</sup>.”

This is a good reminder for medical practitioners that providing treatment to family members - even in the act of writing simple prescriptions - should be considered with caution, and likely avoided.

**Meridian Lawyers regularly assists practitioners regarding AHPRA investigations and disciplinary proceedings. This article was written by Principal Kellie Dell’Oro and Associate Anna Martin. Please contact us if you have any questions or for further information.**



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<sup>3</sup> Good Medical Practice: A Code of Conduct for Doctors in Australia (March 2014), page 11.

<sup>4</sup> *XDH v Medical Board of Australia (Review and Regulation)* [2019] VCAT 377, paragraph 27.

<sup>5</sup> *Ibid*, paragraph 30.

<sup>6</sup> *Ibid*, paragraph 37.

<sup>7</sup> *Ibid*, paragraph 41.