

Health Insights

Professional Misconduct – fact or fiction?

A Perth Cardiologist has recently been found to have engaged in professional misconduct by the Western Australian Administrative Tribunal. ¹ The Medical Board of Australia (the Board) made out five of six allegations against Dr Woollard.

KEY TAKEAWAYS

The case provides a reminder of the meaning of unsatisfactory professional conduct and professional misconduct under *the Health Practitioner Regulation National Law (WA) Act 2010 (National Law)*. It also serves as an important reminder to doctors that they may expose themselves to a finding of professional misconduct if they perform a surgical procedure unsupervised in circumstances where their training is incomplete, and they are not sufficiently experienced in the performance of that procedure.



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BACKGROUND FACTS

In December 2005, a patient underwent a coronary angioplasty procedure performed by Dr Woollard at the Mount Hospital. The patient's condition deteriorated significantly during the procedure. Assistance was provided by a senior Interventional Cardiologist who happened to be free in the next room. The patient underwent emergency cardiac bypass surgery but died the next day.

¹ *The Medical Board of Australia and Woollard* [2018] WASAT 79.

THE ALLEGATIONS AGAINST DR WOOLLARD

The Board alleged that Dr Woollard contravened the National Law. The allegations related to issues of false and misleading statements, inadequate/ incomplete training of Dr Woollard, and his need for supervision, inadequate anticoagulation during the procedure and failure to inform the patient of other options for treatment and the risks of the procedure.

THE NATIONAL LAW

The Tribunal set out the relevant law and guiding principles citing sections 3 and 4 of the National Law, as to the object of the regulation and accreditation of health practitioners,

and to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered.

The Tribunal cited the definition in the National Law section 5 of:

Unprofessional conduct of a registered health practitioner means professional conduct that is of a lesser standard than that which might reasonably be expected of the health practitioner by the public or the practitioner's professional peers.

'Professional misconduct' is defined in the National Law s5 as conduct of a regulated health practitioner which includes:

- (a) unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and
- (b) more than one instance of unprofessional conduct that, when considered together, amount to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience.

The Tribunal went on to define '*unsatisfactory professional performance*',²

[T]he knowledge, skill or judgment possessed, or care exercised by, the practitioner in the practice of the health profession in which the practitioner is registered is below the standard reasonably expected of a health practitioner of an equivalent level of training or experience.

The Tribunal relied on *Health Care Complaints Commission v Bours* (No1) [2014] NSWCATOD 113 (*Bours*).³ Bours held that interpretation of the legislation is assisted by the body of common law in the area of professional disciplinary matters, and a classic common law definition of professional misconduct was viewed as conduct which could be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency.⁴

The principles applied in *Chen v Health Complaints Commission* [2017] NSWCA 186 (*Chen*), were applied by the Tribunal to reach a conclusion as to the characterisation of Dr Woollard's conduct. The term 'professional misconduct' does not have a specific meaning, it is merely a category of 'unsatisfactory professional conduct' which is sufficiently serious to justify suspension or cancellation in line with the National Law.⁵ The phrase 'unprofessional conduct' is broadly defined by reference to 12 separate categories or conduct relating to professional practice. The categories include for example, demonstrating competence or care below the standard reasonably expected of a practitioner of an equivalent level of

² Section 5 of the National Law.

³ *The Medical Board of Australia and Woollard* [2018] WASAT 79 at [11].

⁴ *Ibid* at [11] citing Bours at [524] quoting *Allinson v General Counsel of Medical Education and Registration* (1894) 1 NSWLR QB755.

⁵ The National Law s5, National Law NSW s139E.

training or experience, and any improper or unethical conduct relating to the practice of the practitioner's profession.⁶ There is no category of 'unsatisfactory professional conduct' which is not capable, depending on the circumstances, of giving rise to 'professional misconduct' and hence engaging the power of either suspension or cancellation of registration. The only requirement is that it be 'sufficiently serious' to justify such an order, a characterisation which must depend upon an evaluative judgment made by the Tribunal.⁷

THE EXPERT EVIDENCE

Three highly qualified interventional cardiologists, agreed that Dr Woollard was not experienced enough to justify his attempted angioplasty procedure on the patient, without the supervision of an experienced interventional cardiologist.

The Tribunal agreed, concluding that the evidence was clear that Dr Woollard should never have proceeded with an angioplasty on his own, as he was not sufficiently experienced in the performance of angioplasty procedures, in order to justify attempting that procedure without supervision.

THE FINDINGS

Dr Woollard's conduct amounted to professional misconduct. Proceeding with the procedure without supervision, he went far beyond an error of judgment. He knew he had not met the CSANZ Guidelines necessary to gain accreditation for angioplasty, and refused to concede he lacked experience.

The conduct was held to be 'substantially below the standard reasonably expected of a registered medical practitioner of an equivalent level of training and experience'.

FALSE REPRESENTATIONS

It was alleged that Dr Woollard made false representations to The Medical Advisory Committee (MAC) at the Mount Hospital and its Chairman, Dr Crawford, and that he knew the representations were false. The purpose of misleading the MAC was an attempt by Dr Woollard to achieve accreditation to perform coronary angioplasty procedures at the Mount Hospital without any supervision.

The Tribunal noted that the allegations by The Board that Dr Woollard made 'false representations' and 'deliberately misled', were particularly serious.

The Tribunal applied the standard laid out in *Giudice v Legal Professional Complaints* [2014] WASCA 115, which Martin CJ stated the three (3) categories of case in which that conduct will constitute either professional misconduct or unsatisfactory conduct,⁸

- 1) the practitioner might know that the statement or information is false or misleading;
- 2) the practitioner might have a reckless disregard to the question of whether the statement or information is false or misleading; and,
- 3) the practitioner might be negligent or careless.

The Tribunal concluded that Dr Woollard knew that his statement to the MAC that he had completed the necessary number of angioplasty procedures required for accreditation⁹ was untrue. Dr Woollard knew his statement was false and

⁶ The National Law s 5, National Law NSW s139B (1)(1).

⁷ *The Medical Board of Australia and Woollard* [2018] WASAT 79 at [12].

⁸ *Ibid* at [24].

⁹ Under the Guidelines of the Cardiac Society of Australia and New Zealand (CSANZ).

he subjectively intended to make that false statement. The Tribunal accepted the Board's submissions that Dr Woollard's conduct amounted to professional misconduct. Dr Woollard's conduct fell substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience.

OTHER ALLEGATIONS

Dr Woollard was found to have failed to inform the patient of both the risks associated with his proposed treatment, or the option of referral to a cardiothoracic surgeon.

In addition, Dr Woollard had failed to ensure adequate anticoagulation during the procedure.

In response to the allegation that Dr Woollard gave advice to the patient's wife, knowing it was wrong and for the purpose of misleading the patient's wife, The Tribunal was not satisfied to the requisite standard of proof.

THIS ARTICLE WAS WRITTEN BY PRINCIPAL SHANNON MONY AND LAWYER ROSEMARY BLANDEN. PLEASE CONTACT US IF YOU HAVE ANY QUESTIONS OR IF YOU WOULD LIKE FURTHER INFORMATION.

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