Health Practitioner Regulation National Law (WA) Act 2010

IN THE MATTER OF:

Pharmacy Board of Australia Applicant
-and-
David Brewster Respondent

Matter Number: VR 54 of 2015
Application Lodged: 9 March 2015

ORDER

On the application of the parties to settle the proceedings determined by the President Justice Curthoys and Member Patric De Villiers and Senior Sessional Member Felicity Jefferies.

The Tribunal notes:

The Pharmacy Board of Australia alleged there is proper cause for disciplinary action against the Respondent pursuant to s 193(1)(a)(i) of the Health Practitioner Regulation National Law (the National Law) because the Respondent has behaved in a way that constitutes professional misconduct as defined in section 5 of the National Law.

By a written agreement between the parties dated 20 August 2015 the parties agreed the terms upon which the proceedings could be settled.

The parties have agreed the following relevant facts as set out in Schedule A attached.

The Tribunal Orders:

Being satisfied by reason of the Respondent's admissions that proper cause exists for disciplinary action against the Respondent, and in order to give effect to the agreed terms of settlement of the proceedings, it is on 25 August 2015 ordered pursuant to s 56(1) of the *State Administrative Tribunal Act 2004* (WA) that:

1. the Respondent has behaved in a way that constitutes professional misconduct;

2. the Respondent is reprimanded;

3. the Respondent's registration is cancelled;

4. the Respondent is disqualified from applying for registration as a pharmacist for a period of 1 year from the date of this order; and

5. the Respondent is to pay the Applicant's costs of the Application fixed in the sum of $8,000.00.

President, Justice Curthoys

SCHEDULE A

1. The Respondent is registered as a health practitioner, specifically a Pharmacist, pursuant to the *National Law*.

2. At all material times, the Respondent was the proprietor and licence holder of Hollywood Pharmacy located at 29 Hampden Road, Nedlands in the State of Western Australia (the Pharmacy).

Supply of dispensing labels and medications

3. Pursuant to the Standard for the Uniform Scheduling of Medicines and Poisons, a dispensing label means a label attached to the immediate container of a substance for therapeutic use at the time of dispensing.

4. On two occasions between August 2013 and November 2013, the Respondent supplied labels to act as dispensing labels for Stilnox and Alprazolam medications to a person, for use on containers of medications held by the person but which were not dispensed by the Respondent or the Pharmacy.

Supply of Anabolic Steroids and Pseudoephedrine

5. During the period 20 June 2012 to 20 June 2013, the Pharmacy received large amounts of Primoteston and Sustanon, being anabolic steroids, and Pseudoephedrine based products.

6. On 26 June 2013 the Department of Health (DOH) conducted an audit of the Pharmacy which revealed that the Respondent did not comply with the requirements of the *Poisons Regulations* 1965 in that:

    6.1 There were substantial discrepancies between the incoming amounts of Pseudoephedrine products and the amounts supplied as shown on the Project Stop database, as particularised below;

    6.2 There were discrepancies between incoming amounts of the Primoteston Depot 250mg and Sustanon 250mg injections and the amounts supplied as shown in the prescription book, as particularised below; and

6.3 the Respondent had supplied Primoteston and Sustanon without valid prescription or a written doctor's record and Pseudoephedrine without the Project Stop database being completed.

Drug	Amount Received	Amount accounted for	Discrepancy
Primoteston Depot 250mg injection	2,328	7	2321
Sustanon 250mg injection	28	1	27
Schedule 3 Pseudoephedrine products	2822	468	2354

7. On or about 16 September 2013 the DOH suspended the Respondent's access to anabolic steroids.

Direct Importation of Schedule 4 medication

8. During the period June 2013 to July 2014 the Respondent directly imported Schedule 4 medicines from overseas suppliers, including Modafinil 200mg tablets (the Modafinil).

9. By directly importing the Modafinil the Respondent bypassed the Australian Therapeutic Goods regulatory framework and imported medication which was not contained on the Australian Register of Therapeutic Goods (ARTG).

10. Modafinil is a Schedule 4 medicine which can only be obtained and possessed in Australia under authority (a prescription) issued by an Australian doctor.

11. The Respondent's importation of Modafinil was not accompanied by a prescription as required by law and in or about June 2014 the Australian Customs Service in Sydney seized the imported Modafinil as it entered Australia.

12. On 7 July 2014 the Office of Laboratories & Scientific Services tested the Modafinil which had been seized by Australian Customs and confirmed the presence of both modafinil and tolnaftate (an anti-fungal agent) in the tablets. It concluded that the

tolnaftate was present due to manufacturing carry-over and indicated that the product was of poor quality manufacture.

13. The Respondent admits:

    13.1 importing 2,880 tablets of Modafinil 200 mg medication into Australia;

    13.2 the goods were not for his own use or the use of anyone from his family;

    13.3 he imported the goods knowing them to be goods requiring prescription;

    13.4 he imported the Modafinil for supply to a WA based doctor without a prescription and whose identity he is not prepared to disclose;

    13.5 the tablets would be supplied to the unidentified doctor outside of normal pharmacy protocols; and

    13.6 it was his understanding that the goods were not approved for use in Australia; and

    13.7 the imported tablets seized by Australian Customs in Sydney was not a 'one off' and he had imported Modafinil on behalf of the unidentified doctor on previous occasions.

14. The Respondent made no record of the supply of the Modafinil.

15. The Respondent's importation of the Modafinil medication was in breach of section 19B of the *Therapeutic Goods Act* 1989 in that he has imported medication that is unregistered, not deemed as exempt goods, and is not the subject of any approvals.

16. On 1 October 2014 the Applicant took immediate action under section 156 of the *National Law* to suspend the Respondent's registration as a pharmacist.

17. In or about January 2015 the DOH revoked the Pharmacy's poisons licence.

Mitigating factors

18. Prior to his suspension on 1 October 2014, the Respondent had practised as a registered pharmacist in New Zealand, the United Kingdom and various locations in Western Australia for approximately 32 years. He has not previously been the subject of any disciplinary action.

19. These proceedings were commenced on 9 March 2015. From an early stage of the proceedings, the Respondent has admitted the allegations of professional misconduct made against him and has endeavoured to reach agreement with the Applicant as to the penalty to be imposed upon him. The Respondent states that he deeply regrets what he has done and is remorseful for having conducted himself in the way he has, after having practised without blemish for so long.