

The Senate

Committee of Privileges

Persons referred to in the Senate

The Medical Council of Tasmania

138th Report

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Report

1. On 31 August 2009, the President of the Senate, Senator the Hon. John Hogg, received a letter from Dr Peter T. Sexton, President, on behalf of the Medical Council of Tasmania, asking for the correspondence to be brought to the attention of the Senate and, if possible, recorded in Hansard.

2. The letter referred to comments made by Senator Barnett in the Senate on 11 August 2009. Although the letter did not explicitly refer to the resolution of the Senate of 25 February 1988 relating to the protection of persons referred to in the Senate (Privilege Resolution 5), the President accepted the letter as a submission for the purposes of the resolution and referred it to the Committee of Privileges on 26 August 2009.

3. The committee met in private session on 10 September 2009 and, pursuant to paragraph (3) of Privilege Resolution 5, decided to consider the submission. The committee resolved to recommend that the response be incorporated in Hansard without change. In considering the submission, the committee did not find it necessary to confer with the person making the submission or with the senator concerned.

4. The committee draws attention to paragraph 5(6) of the resolution which requires that, in considering a submission under this resolution and reporting to the Senate, the committee shall not consider or judge the truth of any statements made in the Senate or of the submission.

5. The committee **recommends**:

That a response by Dr Sexton on behalf of the Medical Council of Tasmania in the terms specified at Appendix One, be incorporated in *Hansard*.

George Brandis
Chair

Appendix One

Response by Dr Peter T. Sexton, President, on behalf of the Medical Council of Tasmania Pursuant to Resolution 5(7)(b) of the Senate of 25 February 1988

The Medical Council of Tasmania ('the Medical Council') is an independent statutory authority which administers the *Medical Practitioners Registration Act 1996*. It has a primary role to protect the public, which includes managing risks arising from a doctor's health, professional conduct or professional performance.

In fulfilling this role, the Medical Council may suspend a medical practitioner's registration when it reasonably considers the suspension necessary for:

- the purposes of investigating a complaint made against that medical practitioner; or
- investigating on its own motion a matter that could be the subject of a complaint against that medical practitioner;

or that it is in the public interest to suspend the registration.

Such a decision is one of the most important actions for the Medical Council in terms of the difficulty in balancing the need to protect the public and affording procedural fairness and natural justice to the doctor.

In such circumstances, the Medical Council will only consider immediate suspension of a doctor's registration if Council believes on the basis of the available information that there is a serious risk to public safety if the doctor continues current practice.

The Medical Council received a large volume of information about aspects of Dr McGinity's medical practice on March 27, 2009, which raised significant concerns that there was a serious risk to public safety if he continued his current practice. Accordingly, the Executive Committee of the Medical Council considered the matter and determined that Dr McGinity's registration should be suspended immediately, which was implemented on March 28, 2009. The full Medical Council unanimously resolved to ratify the decision on Friday, April 3, 2009.

At the meeting of April 3, Council appointed an investigation committee consisting of an investigations officer and two medical advisors. Dr McGinity received written communication from the investigation officer on April 6, May 6 and May 26. In addition, the Registrar wrote to Dr McGinity's legal counsel on June 30 explaining that due to the investigations officer requiring a prolonged period of sick leave,

Council had recruited a new investigations officer to continue the investigations of up to 23 cases related to complaints about Dr McGinity's medical practice (at that time).

Where the concerns of the Medical Council relate to a specific element of the doctor's practice, the Council can enter into an agreement with the doctor to alter or limit the scope of practice to reduce risks to the public. In Tasmania, the Medical Council has no powers to impose conditions or to require undertakings which limit the scope of a doctor's practice except at time of initial or re-registration. Thus it may be necessary to suspend the doctor prior to considering a written agreement to address any specific concerns.

The decision to suspend a doctor's registration and/or to enter into "undertakings" does not indicate guilt or that the complaints have been substantiated. It is, however, a decision which is taken to minimise risks to the public during the investigation process and any proceedings which may follow.

The Medical Council resolved that, as the concerns about Dr McGinity's practice related to the diagnosis and management of serious and life-threatening conditions, the Council would consider undertakings which would reduce the risk to the public. Dr McGinity met with Medical Council representatives during the first week of April to discuss returning to practise with restrictions. He chose at that time to remain suspended rather than enter into an agreement with the Medical Council.

Decisions of the Medical Council are subject to appeal to the Supreme Court, which has the power to overturn decisions of the Medical Council. In addition, processes and some decisions of the Medical Council may be examined by the Tasmanian Ombudsman or subject to judicial review.

Dr McGinity appealed the decision to suspend his registration to the Supreme Court. The initial grounds for appeal related to the reasons for the decision and issues related to a perceived lack of natural justice. Just prior to the case commencing, Dr McGinity's defence team set aside the earlier grounds and opted for a new single ground which focussed on the delegation of power to suspend a doctor's registration by the Medical Council to the Executive Committee, and in particular, on whether a quorum for the Executive Committee had been determined by the Medical Council or the Executive Committee. The appeal was upheld with the decision that the Executive Committee did not have the power to determine its own quorum and as there had been a vacancy at the time of the McGinity decision and the Notice of Motion had been issued prior to ratification by full Council of the Executive's decision to suspend, the suspension was considered invalid.

Given that the successful appeal related only to a legal, technical matter rather than addressing the concerns of the Medical Council regarding Dr McGinity's practice, the Medical Council again considered Dr McGinity's registration and he was suspended for a period of six months. Dr McGinity chose not to appeal the second suspension.

Thus, if Dr McGinity was concerned that information available to the Medical Council did not warrant suspension of his registration, he had two opportunities to test this assertion before the Supreme Court of Tasmania. Dr McGinity chose not to do so.

Approximately two weeks after the second suspension of his registration, Dr McGinity approached the Medical Council and undertakings were agreed to which allowed him to return to practise with restrictions. During the (more than) two month period from early April to late June, it is my understanding that Dr McGinity was able to secure locums for his practice and yet refused to sign an agreement with the Medical Council which would have allowed him to work with those locums and provide services to his patients.

The Medical Council is aware that whenever the registration of a doctor is suspended or the doctor's name is removed from the medical register, there will be concerns expressed by loyal patients. The Medical Council is also aware that such a decision may also reduce patient access to medical consultations and may affect employment in the doctor's practice. However, it is not possible for the Medical Council to consider such issues when implementing the protective powers of the legislation without seriously compromising the primary role that the Parliament of Tasmania has required of the Medical Council of Tasmania for over 170 years – that is, the protection of the public.

The Medical Council also understands the importance of public and political opinion in raising issues which may result in constructive changes including amendments to the *Medical Practitioners Registration Act 1996*. It would be, however, an abdication of the fundamental responsibility of the Medical Council of Tasmania to protect the public, if public or political opinion were allowed to interfere with due process and particularly the exercise by the Medical Council of its protective powers in respect to a particular case under investigation.

Most recently, despite an agreement to return to work signed by Dr McGinity, his supporters have continued a campaign which in addition to misrepresenting the facts appears designed to facilitate political interference with due process and to harass members and staff of the Medical Council. I would hope that rather than being encouraged, such behaviour should be condemned by responsible members of the public and elected leaders and I look forward to the support of the Senate in ensuring that like other statutory bodies with protective functions, the Medical Council of Tasmania is allowed to properly fulfil the responsibilities as defined by Tasmanian legislation.