



PROFESSIONAL STANDARDS COMMITTEE INQUIRY

CONSTITUTED PURSUANT TO PART 12 DIVISION 1
of THE MEDICAL PRACTICE ACT 1992 to HOLD AN INQUIRY INTO
A COMPLAINT IN RELATION TO

DR DONALD YEW KIM TAN

Date/s of Inquiry:	Monday 19 October 2009
Committee members:	Ms Geri Ettinger, Chairperson (Legally qualified, not a registered medical practitioner) Dr Glenys Dore (Registered medical practitioner) Dr Victoria Sutton (Registered medical practitioner) Mr Russell Smith (Lay person)
Legal Officer assisting Committee:	Ms Bridget Andersons, Board's legal officer
Appearance for Health Care Complaints Commission:	Ms Katharina Buck, hearing officer
Appearance for Dr Tan	Ms Sondra Riley, Solicitor, Avant Dr Penny Browne, Avant
Date of decision:	12 November 2009
Publication of decision:	The Statement of Reasons of the Committee will be published in full; the name, address and identity of Patient A, and that of the Complainant will be suppressed.

SUMMARY

1. Dr Donald Tan is a sole medical practitioner who has an interest in, and has done various courses in drug and alcohol medicine. He has practised in that field since 1993, and in 2006 was working once a week in a private clinic carrying out Rapid Opiate Detoxification (ROD). He assessed Patient A, and administered ROD, without, in the opinion of the PSC, selecting him satisfactorily for the procedure, without instructing the Patient when to cease drug taking in conformity with the relevant Guidelines, and without informing himself that the Patient's Methadone prescriber had been satisfactorily notified. He also discharged the patient when in a moderately delusional state. The PSC was concerned that neither the Psych 'n Soul Clinic nor Dr Tan followed the Commonwealth, the NSW Guidelines and the NSW Medical Board Code in relation to ROD. We found he had breached section 36 of the *Medical Practice Act 1992*.

BACKGROUND

2. Dr Tan is a registered medical practitioner, MPO 123660, who completed his studies in medicine at the University of Malaya in 1971, and obtained registration in New South Wales and South Australia in 1976. He has been practising in Fairfield as a sole practitioner since approximately 1978. At the relevant time in 2006, Dr Tan was employed as a medical officer by the Psych 'n Soul Clinic in Ultimo, a private facility offering Rapid Opiate Detoxification, (ROD), as a day procedure to drug dependent patients. He told us he did this work once a week. He is an accredited prescriber of Methadone, and is presently registered for the maximum number of patients, which is 200.
3. The HCCC's peer reviewer, Dr A Wodak who gave oral evidence before the Inquiry, and provided written reports dated 20 January 2008 and 11 April 2008, is a specialist Addiction Medicine physician. Dr Wodak has been Director of the Alcohol and Drug Service of St Vincent's Hospital since 1982, a lecturer at the University of New South Wales School of Medicine, and has participated in numerous committees and boards in the area of drug and alcohol dependency. He is also the author of numerous publications associated with his specialty.
4. Dr Wodak told us that he is not ideologically opposed to the use of Naltrexone, but that he is mindful of the importance of appropriate regulation of the medical use of this medication around the world. He opined that whilst Naltrexone is considered effective theoretically for opioid dependence, scientific research trials have not yet established its efficacy, nor properly evaluated the level of its safety. He opined that the empirical evidence for its use is weak. He commented that interest in Naltrexone therapy in Australia increased in approximately 1997 after it was written up in a popular women's magazine. Dr Wodak also opined that the use of oral Naltrexone is relatively ineffective because compliance by patients has been found to be poor.

5. Dr Wodak's position is that the selection of patients for Naltrexone therapy is a primary consideration in its application, and that it is an option of last resort for patients who have had a long history of drug dependence, and who have made multiple unsuccessful attempts to cease the habit. He also commented that a facility offering ROD should be capable of handling emergencies. e.g. have an ICU- like setup with trained staff, and have to be capable of keeping patients overnight when indicated. Dr Wodak told us that he has not performed any ROD procedures, but has witnessed two patients receiving it.
6. We are mindful that although Dr Tan was of the opinion there was a special arrangement between Psych 'n Soul and the Royal Prince Alfred Hospital, (RPAH), with regard to the handling of emergencies, we are satisfied that this was not so. We relied on correspondence from the CEO of the Sydney South West Area Health Service with the HCCC in April 2007 in which the CEO acknowledged that the Clinical Director of Psych 'n Soul had sought to make such an arrangement in 2003, and that he gave the then Director of Emergency Medicine at RPAH an "Emergency Transfer Protocol". He wrote however that: "... RPAH was open 24 hours a day for any clinical problem perceived as an Emergency. For this reason, it was neither appropriate nor necessary to enter into any formal arrangement with a private community facility. ... No formal arrangement or agreement was entered into between the Psych 'n Soul Clinic and RPA Emergency Department."
7. Dr Tan also gave oral evidence before the Inquiry. He was represented by Dr P Browne and advised by Ms S Riley of Avant.
8. The Professional Standards Committee noted that the practitioner admitted certain of the Particulars of the Complaint, and did not agree that he had breached section 36 of the *Medical Practice Act 1992*, (the Act), and that he was therefore guilty of unsatisfactory professional conduct.
9. The Committee found that the Complaint brought by the HCCC against Dr Tan is proven, and found that Dr Tan is guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act. We have imposed certain Conditions on his practice, which are detailed further on in this Statement of Reasons.
10. Our reasons follow.

ONUS & STANDARD OF PROOF

11. The HCCC bears the onus of establishing that Dr Tan has been guilty of unsatisfactory professional conduct pursuant to section 36 of the *Medical Practice Act 1992*, (the Act), which provides relevantly:

36 Meaning of "unsatisfactory professional conduct"

(1) For the purposes of this Act, *unsatisfactory professional conduct* of a registered medical practitioner includes each of the following:

(a) Conduct significantly below reasonable standard

Any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

12. The Committee noted the admission of certain of the Particulars of Complaint, and notes that for the Complaint to be proven, the Committee must be comfortably satisfied on the balance of probabilities that Dr Tan engaged in the conduct complained of, and that this conduct satisfies the statutory definition of unsatisfactory professional conduct.

In that regard the Committee is mindful of the Court in *Briginshaw v Briginshaw* (1938) 60 CLR 336, which stated as follows:

"But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences. ..."

As noted above, the High Court has ruled that decisions by bodies similar to this Professional Standards Committee must not rely on inexact proof, indefinite testimony or indirect inferences, and these principles are applied to this decision.

12. The phrase "*significantly below*" is not defined in the Act. However, it was considered in the decision of *Re A Medical Practitioner and the Medical Practice Act* [40010 of 2007] where Judge Freeman stated:

"As a general principle, the use of the term 'significant' may in law be taken to mean not trivial, of importance, or substantial."

13. In forming our views on the matters before us, the Members of the Committee have taken into account the seriousness of the matters, the inherent likelihood of an occurrence of a given description, and the gravity of the consequence flowing from a particular finding.
14. In that context, we are mindful that Dr Tan who graduated in medicine from at the University of Malaya in 1971, is a general practitioner, and has worked in the field of Addiction Medicine since at least the early 1990s. He has undertaken various courses in relation to that work. He told us that in 2003, he enrolled in a Master course in Addiction Studies at the Department of Pharmacology, University of Adelaide; that course remains uncompleted.

15. There were three documents before us which deal with the administration of Naltrexone, being:
- "NSW Medical Board – Code of Professional Conduct Rapid Detoxification in an Unlicensed Setting, January 2004" (NSW Medical Board's Code)
 - Clinical Guidelines and Procedures for the Use of Naltrexone in the Management of Opioid Dependence, Commonwealth 2003"
 - NSW Health Circular 2001/17 Guidelines for Rapid Opiate Detoxification, February 2001".
16. They must be taken into account by practitioners prescribing Naltrexone and related medication. We noted in particular that the application of the NSW Medical Board's Code is mandatory as the Code is promulgated pursuant to section 99A of the *Medical Practice Act 1992*.
17. In coming to a decision, we have taken into account Dr Tan's evidence that he has not worked at the Psych 'n Soul Clinic since 2007. We noted his evidence that apart from a few occasions when he did a locum in 2008, and three training sessions for new medical officers at the Clinic, he no longer involves himself in ROD. His stated reason for no longer undertaking ROD was that he could not adhere to all the procedures which are prescribed in the various Guidelines, and of which he first became aware at the time of Dr Wodak's report. In coming to our decision we have taken into account that Dr Tan works as a sole practitioner.

THE COMPLAINT

18. A Complaint dated 22 January 2009 against Dr Tan was referred by the NSW Health Care Complaints Commissioner to be dealt with by a Professional Standards Committee. It was prosecuted before this Committee by the Director of Proceedings acting as nominal complainant. The Complaint against Dr Tan is as follows:

The Health Care Complaints Commission of Level 13, 323 Castlereagh Street, Sydney NSW, having consulted with the New South Wales Medical Board in accordance with sections 39(2) and 90B(3) of the Health Care Complaints Act 1993 and section 51(1) of the Medical Practice Act 1992 ("the Act")

HEREBY COMPLAINS THAT:

Dr Donald Y K TAN of 3/39 Harris St, Fairfield NSW 2165 ("the practitioner"), being a medical practitioner registered under the Act,

COMPLAINT

Has been guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act in that:

He has demonstrated that the knowledge, skill or judgment possessed, or care exercised, by him in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

PARTICULARS OF COMPLAINT

19. The particulars of the complaint are as follows:

At all relevant times the practitioner was employed as a medical officer by the Psych n Soul Clinic, Ultimo, which is a private facility offering Rapid Opioid Detoxification (ROD) as a day procedure to drug dependant patients.

On 18 October 2006 the practitioner conducted a pre-procedure medical assessment of the patient who had been on a methadone program for the previous 3 years.

On 1 November 2006 the practitioner initiated ROD for the patient involving the induction of naloxone and naltrexone.

- 1. On 18 October 2006 the practitioner failed to take an adequate drug use history from the patient as part of the medical assessment prior to the initiation of the ROD procedure.*
- 2. On 18 October 2006 the practitioner prescribed the opioid Ms Contin to the patient without advising the patient when to cease taking the drug prior to the ROD procedure.*
- 3. The practitioner inappropriately failed to cease the patient's use of the MS Contin he had prescribed at least 5 days before the ROD procedure given the long half-life of the agent.*
- 4. On 1 November 2006 the practitioner administered naltrexone to the patient in circumstances where he knew or ought to have known that the patient had used opioids, namely MS Contin, in the previous 24 hours.*
- 5. The practitioner failed to ensure an opioid-free interval of at least 48 hours before initiating the ROD procedure, thereby:*
 - (i) Breaching the requirements of the NSW Guidelines for the Rapid Detoxification from Opiates, the NSW Medical Board Code of Professional Conduct: Rapid Detoxification in an Unlicensed Setting and the Commonwealth Clinical Guidelines and Procedures for the use of Naltrexone in the Management of Opioid Dependence; and/or*

- (ii) *Failing to minimise the risks to the patient of a severe withdrawal reaction.*
6. *The practitioner did not discuss the plan to initiate ROD with the patient's methadone prescriber prior to the induction of naltrexone on 1 November 2006, thereby:*
- (i) *Failing to satisfy himself that the patient had ceased using methadone for the requisite 5-7 days prior to the procedure; and/or*
 - (ii) *Breaching the requirements of the NSW Guidelines for the Rapid Detoxification from Opiates and the NSW Medical Board Code of Professional Conduct: Rapid Detoxification in an Unlicensed Setting.*
7. *On 1 November 2006, at approximately 4.30pm, the practitioner allowed the patient to be discharged into the care of his support person when the patient was assessed as still being moderately delusional.*

CONSIDERATION OF THE COMPLAINT & REASONS FOR DECISION

20. It is not in dispute that Dr Tan has been in sole general practice in Australia since approximately 1978, and that he was employed to carry out ROD at the Psych 'n Soul Clinic at the relevant time in 2006. On 18 October 2006, he carried out a pre-procedure assessment on Patient A who had been on the Methadone program for the previous three years. On 1 November 2006, Dr Tan initiated ROD for the patient involving induction of Naxolone and Naltrexone.
21. Between 4:30 and 5:00 pm on the same day, 1 November 2006, the patient was discharged following the procedure, as arranged, into the care of his partner, and was later that day was admitted to the intensive care of RPAH under the care of Professor H suffering what was described on the admission documents as: *"agitation and delerium after rapid opiate detoxification"*. He remained at RPAH from 1 - 8 November 2006.
22. Dr Tan admitted certain of the Particulars of the Complaint. All the Particulars will be discussed in the paragraphs which follow. He did not admit that he was guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act.
23. In coming to a decision, we have taken into account all the evidence before us, as well as the submissions made by the parties' representatives, and noted Dr Tan's involvement in the treatment of drug dependent patients since 1998, his study and practice in Addiction Medicine, and the prescription of methadone and buprenorphine, in order to determine the standard which we need to apply to the decision we make. We have noted that Dr Tan observed ROD treatments back in 1998 and that he told us he learnt the procedure from his peers in 1999. We noted also that Dr Tan has commenced a Masters

course in Addiction Studies at the Department of Pharmacology, University of Adelaide which he has not completed. He told us he intended to do so by the end of this year.

24. We noted that in correspondence with the HCCC dated 19 March 2008, Dr Tan stated as follows:

"It seems that the review of evidence conducted by the Expert Advisor and your letter dated 25 February 2008 largely referred to the NSW Health Department Circular dated 23 February 2001. The Clinical Guidelines and Procedures for the use of Naltrexone in the Management of Opioid Dependence (the Guidelines) I have consistently followed for the past 21/2 years are those published by Australian Government Department of Health and Ageing dated August 2003. It seems that these Guidelines take precedence over the earlier circular you have relied upon...."

25. In his oral evidence Dr Tan told us that the Clinical Director of the Psych 'n Soul Clinic, Mr R Colquhoun had written the letter of 19 March 2008 referred to above, which he (Dr Tan), had signed.

26. We noted the inconsistency in regard to the following of prescribed Clinical Guidelines as stated by Dr Tan in his letter of 19 March 2008, with the evidence given by Dr Tan at the Inquiry, which was that he had not heard of the relevant Guidelines which doctors must follow when carrying out ROD until after Dr Wodak's report had issued.

27. Dr Tan also told the Committee that he ceased working at Psych 'n Soul in 2007, and has not carried out ROD procedures since, except a few occasions during 2008 when he worked as a locum for the Clinic. He indicated he could not carry out the procedures and adhere to the Guidelines because of the drug free period stipulated in those, and accordingly would no longer be carrying out ROD procedures.

28. We moved then to consider the Particulars of Complaint. The HCCC Complaint, which Dr Tan did not admit was that he:

Has been guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act in that:

He has demonstrated that the knowledge, skill or judgment possessed, or care exercised, by him in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

29. The Particulars of the Complaint, the three preliminary paragraphs of which follow, were admitted by Dr Tan.

At all relevant times the practitioner was employed as a medical officer by the Psych n Soul Clinic, Ultimo, which is a private facility offering Rapid Opioid Detoxification (ROD) as a day procedure to drug dependant patients.

On 18 October 2006 the practitioner conducted a pre-procedure medical assessment of the patient who had been on a methadone program for the previous 3 years.

On 1 November 2006 the practitioner initiated ROD for the patient involving the induction of naloxone and naltrexone.

THE PARTICULARS

Particular 1. On 18 October 2006 the practitioner failed to take an adequate drug use history from the patient as part of the medical assessment prior to the initiation of the ROD procedure.

30. The medical records for Patient A from both the Psych 'n Soul and RPAH were before us in the documents tendered by the HCCC. The Psych 'n Soul documents consisted of an Assessment Questionnaire dated 17 October 2006. There was also an "Authority to Release Information", correspondence, and a "Pre R.I.O.N. Medical Assessment" (18 October 2006), followed by an Admission Record, results of pathology tests, and a "Treatment Agreement and Informed Consent" (1 November 2006), as well as a page headed "Ultimo Rehabilitation Practice".
31. The final document, the "Ultimo Rehabilitation Practice" was a record of the drugs administered to Patient A when he undertook the ROD treatment on 1 November 2006. Although the drugs administered to Patient A before the ROD procedure do not form part of the Complaint, the Members of the Committee felt it necessary to comment in particular on the selection, dosage of drugs and the fact nine different drugs were administered as pre-medication, agreeing with Dr Wodak that the administration of three different types of benzodiazepines was, at best, unwise.
32. The Assessment Questionnaire which was 18 pages long consisted mainly of multiple choice questions. The "Pre R.I.O.N. Medical Assessment" dated 18 October 2006 had a notation by Dr Tan "Ref. To Notes". No such notes were produced by the Respondent at first. A photocopy of the page of notes Dr Tan says he made at the time, and to which he referred in the "Pre R.I.O.N. Medical Assessment", was forwarded to the Committee shortly before the Inquiry. No original has been produced.
33. We noted Dr Wodak's opinion with which we concurred, that those notes somewhat amplified the very scant information provided by the "Pre R.I.O.N. Medical Assessment" in which Dr Tan also prescribed 100 mg tds (three times daily), MS Contin. We were mindful that the prescription of MS Contin to an opioid addicted person without the special authorisation required, would appear to have been unlawful.
34. Dr Tan's representative submitted that the notes with regard to the consultation with Patient A on 18 October 2006 were made

contemporaneously, were adequate, and should therefore be accepted as a true record of Dr Tan's questioning and assessment of the Patient.

35. Both the Committee and Dr Wodak were concerned that the information in the pre-assessment, even with the inclusion of Dr Tan's page of notes, was not sufficiently in depth to indicate that patients were in fact suitable for ROD, that they had been properly selected for the treatment, and that they had not simply applied to undertake it.
36. We agreed with Dr Wodak's opinion, which was for a patient to undergo ROD, this must be a choice of treatment of last resort. We agreed that the patient must have a long history of severe drug dependence, accompanied by multiple attempts to cease drug taking. We were mindful that the scant history taken by Dr Tan indicated Patient A had been opioid dependent, and had tried a number of other treatment options, but that the motivation for ROD treatment appeared to be a desire to cease methadone, rather than unsuccessful treatment. In addition, Patient A's assessment indicated that he was suffering from moderate depression, with a Beck Depression Inventory-II score of 20. While Dr Wodak noted that depression is a common occurrence in such patients, the NSW Medical Board Code indicates that moderate or severe depression is a relative contraindication to rapid detoxification, and requires a psychiatric evaluation. Patient A did not receive a psychiatric evaluation. We were accordingly not persuaded that Patient A was necessarily a patient who was suitable for, or should have undergone ROD at the relevant time in 2006.
37. Dr Tan told us that by the time he saw patients on the day of the treatment, they had already attended at Psych 'n Soul and completed their assessment. He explained that as to his role in history taking; Patient A's partner was present all the time he took the history (for the "Pre R.I.O.N. Medical Assessment", which we noted consisted of a single page). He agreed, when asked, that Patient A could in fact have told him anything he wished, and that no collaborative information was sought. Dr Tan also told us that he took as much time as he required with the pre-assessment, probably approximately half an hour, and satisfied himself that the patient, and in this case, Patient A was suitable for the ROD procedure. He also told us that Psych 'n Soul requires the patients to attend a rehabilitation program after their Naltrexone treatment.
38. The Committee did not consider the history taken to be as comprehensive as it would have preferred pursuant to best practice, and referable to the NSW Medical Board Code and the Guidelines. We recognise that Dr Tan operated in a system which provided the documentation, and are mindful that the decisions regarding selection of patients and early assessment were not entirely his, but rather at the direction of the Psych 'n Soul Clinic. However, given that he was the medical practitioner administering the ROD treatment to Patient A, we were not satisfied to the requisite standard that Dr Tan had taken sufficient information from Patient A in order to determine that he was suitable for the ROD treatment on 1 November 2006.

39. Dr Wodak's opinion was that although he was encouraged to read the extra page of Dr Tan's clinical notes in relation to Patient A, he still considered them to be cursory, and comprehensive, and considered that to be a serious departure from the standard reasonably expected of a practitioner of an equivalent level of training or experience.
40. The Committee concurred with that opinion, and we accordingly find pursuant to the requisite standard that Particular 1. is proven. We find that Dr Tan is guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act in relation to Particular 1., in that he has demonstrated that the knowledge, skill or judgment possessed, or care exercised by him in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience (Dr Tan's level of practice and training as discussed in his CV and above).

Particular 2. On 18 October 2006 the practitioner prescribed the opioid Ms Contin to the patient without advising the patient when to cease taking the drug prior to the ROD procedure.

41. We have noted the requirements of the three abovenamed Guidelines in relation to the ingestion of drugs prior to ROD, which in summary, are that patients must be free of short acting opioids such as morphine or heroin for at least 48 hours, and free of methadone for at least five (NSW Medical Board Code), (NSW State Guidelines, seven days, and the Commonwealth Guidelines, 10 days).
42. Dr Tan denied he had not advised Patient A when to cease taking the MS Contin he had prescribed on 18 October 2006. He told us that he had advised Patient A to cease the drug on the Tuesday morning before the Wednesday procedure, and that he was satisfied Patient A had done so. We are mindful that Dr Tan's instruction to the Patient breached the Guidelines, which in summary, are that patients must be free of short acting opioids such as morphine or heroin for at least 48 hours before the ROD procedure.
43. We have already noted above Dr Tan's evidence that the instruction he gave was the usual one, that he was not aware of any of the relevant Guidelines until he read Dr Wodak's report, and that he no longer works at Psych 'n Soul. He stated that he could not apply the Guidelines, because if patients were able to be drug free for the required period, they would not require ROD.
44. Dr Wodak commented on the prescription of MS Contin to Patient A on 18 October 2006, without the instruction to cease taking it 48 hours prior to attending the ROD, and that Patient A therefore had the drug circulating in his system when he attended the ROD on 1 November 2006. Dr Wodak stated that both the Commonwealth and NSW Guidelines were clear on that point, and that it was important from a biological point of view that the patient be drug free for at least 48 hours before the administration of ROD. Dr Wodak opined that the prescription of opioid by Dr Tan to Patient A without advising him when to cease taking the drug 48 hours prior to the ROD procedure was a breach of the Guidelines, and a serious departure from the standard

reasonably expected of a practitioner of an equivalent level of training or experience.

45. We have noted Dr Tan's evidence, his lack of knowledge of the requirements of the relevant Guidelines, and his instructions to Patient A regarding when to cease taking MS Contin. As mentioned above, we are concerned that Dr Tan prescribed MS Contin in the circumstances, noting it may be a breach of the legislation, and further, that he breached the Guidelines by not requiring Patient A to cease taking the drug 48 hours prior to the ROD procedure.
46. Accordingly we find pursuant to the requisite standard that Particular 2. is proven. We find that Dr Tan is guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act in relation to Particular 2., in that he has demonstrated that the knowledge, skill or judgment possessed, or care exercised by him in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience (Dr Tan's level of practice and training as discussed in his CV and above).

Particular 3. The practitioner inappropriately failed to cease the patient's use of the MS Contin he had prescribed at least 5 days before the ROD procedure given the long half-life of the agent.

47. We have noted the requirements of the three relevant Guidelines in relation to the ingestion of drugs prior to ROD, which in summary, are that patients must be free of short acting opioids such as morphine or heroin for at least 48 hours, and free of Methadone for at least five days (NSW Medical Board Code), (NSW State Guidelines, seven days, and the Commonwealth Guidelines, 10 days).
48. Dr Tan stated that he told Patient A to cease taking MS Contin on the *"Tuesday morning before the Wednesday procedure"* and was satisfied that Patient A complied with that instruction. In effect he admitted Particular 3. He also admitted when questioned that at the relevant time he was not aware what was required by the Guidelines, and that in any case, if Patient A had been able to cease drugs five days before the ROD, there would have been no need for the procedure. He opined that: *"if the patient had been drug free for five days, he would have suffered withdrawal with no support and a high likelihood of relapse."* We do not accept that as a legitimate defence, and note in passing that hospitalisation before ROD may be a way of achieving the required drug free period.
49. Dr Wodak opined that a breach of the Guidelines in this way was a serious breach of the standard reasonably expected of a practitioner of an equivalent level of training or experience (Dr Tan's level of practice and training is as discussed in his CV, and above).
50. We are satisfied from his evidence that Dr Tan did not instruct Patient A to cease his opioid taking in accordance with the Guidelines, that is, at least 48

hours before the ROD procedure, because Dr Tan admitted that at the time, he was not aware of those Guidelines, and the relevant requirements.

51. We are therefore also satisfied from Dr Tan's evidence that he failed to cease Patient A's MS Contin, which he had prescribed, at least five days before the ROD procedure. Accordingly we find pursuant to the requisite standard that Particular 3. is proven.
52. Because of the requirement in the Guidelines that Patient A should have ceased MS Contin at least 48 hours, (and not five days), before the ROD procedure, and Dr Tan's admission that he did not follow the Guidelines, we find that Dr Tan is guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act in relation to Particular 3. We find that in relation to Particular 3., he has demonstrated that the knowledge, skill or judgment possessed, or care exercised by him in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience (Dr Tan's level of practice and training as discussed in his CV and above).

Particular 4. On 1 November 2006 the practitioner administered naltrexone to the patient in circumstances where he knew or ought to have known that the patient had used opioids, namely MS Contin, in the previous 24 hours.

53. We have already stated above in relation to Particular 2., what the relevant Guidelines stipulate in relation to the patient and drug taking before ROD. We also reiterate Dr Tan's evidence that he was not aware of the stipulations in the Guidelines at the time of administering ROD to Patient A. Accordingly, having prescribed MS Contin on 18 October 2006, and instructing Patient A to cease the dose some 24 hours before the procedure, he knew that Patient A had used opioids, i.e. MS Contin in the previous 24 hours.
54. Dr Wodak's opinion was that this was a breach of the Guidelines, and a serious departure from the standard reasonably expected of a practitioner of an equivalent level of training or experience.
55. Accordingly we were satisfied that Dr Tan administered Naltrexone to the Patient A in circumstances where he knew that the patient had used opioids, namely MS Contin, in the 24 hours before the ROD procedure on 1 November 2006.
56. Accordingly the Committee finds pursuant to the requisite standard that Particular 4. is proven. We find that Dr Tan is guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act in relation to Particular 4., in that he has demonstrated that the knowledge, skill or judgment possessed, or care exercised by him in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience (Dr Tan's level of practice and training as discussed in his CV and above).

Particular 5. The practitioner failed to ensure an opioid-free interval of at least 48 hours before initiating the ROD procedure, thereby:

(i) Breaching the requirements of the NSW Guidelines for the Rapid Detoxification from Opiates, the NSW Medical Board Code of Professional Conduct: Rapid Detoxification in an Unlicensed Setting and the Commonwealth Clinical Guidelines and Procedures for the use of Naltrexone in the Management of Opioid Dependence; and/or

(ii) Failing to minimise the risks to the patient of a severe withdrawal reaction.

57. We have already stated above that the relevant Code and Guidelines stipulate the patient be opioid free for at least 48 hours before ROD, and reiterate Dr Tan's evidence that he was not aware of the Guidelines or what they stipulated at the time of seeing Patient A and/or administering ROD to him. Accordingly, having prescribed MS Contin on 18 October 2006, and instructing Patient A to cease the dose some 24 hours before the procedure on 1 November 2006, Dr Tan knew that Patient A had used opioids, i.e. MS Contin in the 24 hours before the ROD. We have already made that finding in relation to Particular 4. above.
58. As to Particular 5.(ii), Dr Tan stated that the risks to the patient undergoing ROD were minimised in that the procedure was carried out in a medically controlled environment. In that regard, we were mindful that at the relevant time there were no arrangements to keep a patient after hours or overnight at the Clinic, and that in fact Patient A was admitted to RPAH intensive care following his discharge at approximately 5:00 pm on 1 November 2006, and that he was in hospital until 8 November 2006.
59. The Committee was also mindful of the Psych 'n Soul document, the "Ultimo Rehabilitation Practice" which was a record of the drugs administered to Patient A as part of the ROD treatment on 1 November 2006. Although the drugs administered to Patient A before the ROD procedure do not form part of the Complaint, the Members of the Committee felt it necessary to comment in particular on the selection, dosage of drugs and the fact nine different forms of pre-medication were administered, agreeing with Dr Wodak that the administration of three different types of benzodiazepines was, at best, unwise.
60. Dr Wodak's opinion was that the breach of the Guidelines was a serious departure from the standard reasonably expected of a practitioner of an equivalent level of training or experience. He commented that it was "a struggle" and "not easy", but was adamant that the Guidelines had to be applied. Dr Wodak suggested that where necessary a patient should be hospitalised prior to the procedure to ensure compliance with a drug free regimen. He opined that the risks of undergoing ROD without being appropriately drug free was dangerous.

61. The Committee is satisfied from the evidence that by initiating the ROD without ensuring an opioid-free interval of at least 48 hours before the procedure, Dr Tan breached the requirements of the relevant Code and Guidelines, being:
- NSW Guidelines for the Rapid Detoxification from Opiates
 - NSW Medical Board Code of Professional Conduct: Rapid Detoxification in an Unlicensed Setting, and the
 - Commonwealth Clinical Guidelines and Procedures for the use of Naltrexone in the Management of Opioid Dependence.
48. We are satisfied that in doing so, Dr Tan failed to minimise the risks to the patient of a severe withdrawal reaction.
62. Accordingly we find on the evidence that pursuant to the requisite standard that Particular 5. is proven. We find that Dr Tan is guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act in relation to Particular 5., in that he has demonstrated that the knowledge, skill or judgment possessed, or care exercised by him in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience (Dr Tan's level of practice and training as discussed in his CV and above).

Particular 6. The practitioner did not discuss the plan to initiate ROD with the patient's methadone prescriber prior to the induction of naltrexone on 1 November 2006, thereby:

- (i) Failing to satisfy himself that the patient had ceased using methadone for the requisite 5-7 days prior to the procedure; and/or***
 - (ii) Breaching the requirements of the NSW Guidelines for the Rapid Detoxification from Opiates and the NSW Medical Board Code of Professional Conduct: Rapid Detoxification in an Unlicensed Setting.***
63. Dr Tan agreed that he did not discuss the plan to administer ROD with Patient A's Methadone prescriber prior to the date of the procedure on 1 November 2006. However, he referred us to a copy of a letter he claims was routinely faxed to each Methadone prescriber in relation to each patient undergoing ROD at the Pysch 'n Soul Clinic. He agreed that he did not personally send the letter, or contact the prescriber, but said that the Clinic routinely undertook to send such a letter. Dr Tan's representative submitted that the fact he made no follow-up telephone call to patient A's Methadone provider was not significant in the scheme of things.
64. We noted that the letter requesting the cessation of Methadone from 19 October 2006 to Patient A's general practitioner at Tab 4 of Dr Tan's documents was dated 18 October 2006, that it bore no marks indicating it had

been faxed or otherwise sent, was not signed by Dr Tan or anyone else, and referred to another male person by name in the final paragraph, followed by a reference "she", to a female person.

65. We noted that Dr Wodak, in commenting on the abovementioned letter which was said to have been sent to Patient A's Methadone prescriber, stated that it was difficult to document every aspect of clinical practice, and if the prescriber was notified by letter from the Clinic, that may have been adequate. He said that record keeping was an onerous part of practice, not every aspect of clinical practice was always documented, and in the circumstances, Dr Tan may have seen that the letter was sent, and not kept a record of that.
66. We could not however be satisfied the letter had been received by Patient A's Methadone prescriber, neither that it had actually been faxed. However, by Dr Tan's own admission, which we accept, he left it to the Clinic to send such correspondence, he did not sign the letter, and he did not discuss the plan to administer ROD with Patient A's Methadone prescriber prior to the date of the procedure on 1 November 2006. We are concerned that if Dr Tan was reliant on a patient's compliance with the cessation of methadone treatment, rather than notifying his/her medical practitioner, we would consider that unsatisfactory.
67. As to Particular 6.(i), we noted that Dr Tan did not deny that he had failed to satisfy himself that Patient A had ceased using Methadone for the requisite 5-7 days prior to the ROD procedure on 1 November 2006.
68. We have already stated above that the relevant Guidelines stipulate that before ROD, the patient be Methadone free for five days (NSW Medical Board Code) or seven days (NSW Guidelines). We reiterate Dr Tan's evidence that he was not aware of those stipulations at the time of administering ROD to Patient A. Accordingly, having prescribed MS Contin on 18 October 2006, and instructing Patient A to cease the dose some 24 hours before the procedure, he knew that Patient A had used opioids, i.e. MS Contin in the previous 24 hours. Dr Tan did not give any evidence regarding Patient A's cessation of Methadone before the ROD procedure which satisfied us that Patient A had ceased using Methadone for the requisite 5 – 7 days before the ROD procedure.
69. Dr Wodak's opinion was that such breach of the Guidelines was a serious departure from the standard reasonably expected of a practitioner of an equivalent level of training or experience.
70. We are thus satisfied to the requisite standard from the evidence discussed above, that Dr Tan did not discuss the plan to initiate ROD with the patient's Methadone prescriber prior to the induction of naltrexone on 1 November 2006. He also failed to satisfy himself that Patient A had ceased using Methadone for the requisite 5-7 days prior to the procedure, thereby Breaching the requirements of the NSW Guidelines and the NSW Medical Board Code.

71. Accordingly we find pursuant to the requisite standard that Particular 6. is proven. We find that Dr Tan is guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act in relation to Particular 6., in that he has demonstrated that the knowledge, skill or judgment possessed, or care exercised by him in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience (Dr Tan's level of practice and training as discussed in his CV and above).

Particular 7. On 1 November 2006, at approximately 4.30pm, the practitioner allowed the patient to be discharged into the care of his support person when the patient was assessed as still being moderately delusional.

72. Dr Tan told us that after the procedure on 1 November 2006, the nurse would have asked Patient A to dress, which he is said to have done unaided, and that he (Dr Tan), walked the patient to the car accompanied by his partner. He said that by that time it must have been approximately 5:00 pm. He said that he always explained what the effects of the procedure might be, that the patient would be drowsy, he made sure the patient had contact numbers for the Director of the Clinic in case of an emergency, (who would notify Dr Tan if necessary). He said that he also advised the patient to attend a hospital if he felt it became necessary. Dr Tan initially denied that Patient A was "moderately delusional" when he left the Clinic. However at the Inquiry, he admitted that was so, and realised that Patient A should have been monitored for longer at the Clinic.
73. Dr WodaK opined that he found this Particular the most worrisome, because of the requirements in regard to ROD set by the Commonwealth and NSW Guidelines in relation to follow-up after the ROD procedure. He indicated the potentially serious consequences to the safety and life of the patient and support people. He emphasised that Clinics carrying out ROD should have longer stay or overnight facilities, and that Patient A arrived at RPAH moderately delusional, which was firstly denied, but which Dr Tan acknowledged at the Inquiry.
74. The Committee was concerned with the lack of longer stay or overnight facilities at the Clinic at the relevant time, and noted that there were no special arrangements for patients of the Clinic who required care after the 4:30 pm discharge time. We are mindful that Patient A's partner was concerned enough to take him to RPAH where he was admitted to intensive care, and that he remained in hospital from 1 – 8 November 2006. We noted that due to geographical proximity of the Clinic to the Hospital there could be no doubt that Patient A's condition on arrival at RPAH reflected closely how he was when he was discharged from Psych 'n Soul.
75. The Committee accordingly finds pursuant to the requisite standard that Particular 7. is proven. We find that Dr Tan is guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act in relation to Particular 7., in that he has demonstrated that the knowledge, skill or judgment possessed, or care exercised by him in the practice of medicine is

significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience (Dr Tan's level of practice and training as discussed in his CV and above).

REFEREES

76. Dr Tan provided two references. The Referees who appeared from their letters to know about the Complaint, expressed appreciation of Dr Tan and his work. One would expect references tendered to a disciplinary hearing to be favourable. The Referees were not cross-examined.
77. We have dealt with the Complaint as we must in the context of all the evidence and the legislation, and whilst we have noted the references, we have accorded them little weight in coming to a decision.

EXHIBITS

78. The Committee has considered the following documents which were provided by the parties prior to the hearing: 1 to 21 from the HCCC and 1 to 7 from Dr Tan.

FINDINGS

79. The Committee must be reasonably satisfied of any findings that it makes. In forming its views on these matters the Committee has taken into account the seriousness of the matters, the inherent likelihood of an occurrence of a given description and the gravity of the consequence flowing from a particular finding. We have considered the written and oral evidence, and the oral and written submissions made by the parties as well as the relevant Guidelines.
80. We noted that Dr Tan admitted that at all relevant times he was employed as a medical officer by the Psych n Soul Clinic, a private facility offering Rapid Opioid Detoxification as a day procedure to drug dependant patients. He admitted that On 18 October 2006 he conducted a pre-procedure medical assessment of Patient A who had been on a methadone program for the previous 3 years, and that on 1 November 2006 he initiated ROD for the patient involving the induction of Naloxone and Naltrexone.
81. Dr Tan did not admit that he had breached section 36 of the Act. We note in summary that in relation to:
 - Particular 1. - Dr Tan denied that he failed to take an adequate history of drug use from Patient A as part of the assessment prior to administering ROD. The Committee was satisfied Particular 1. was proven, but was also critical of the Clinic's documentation which consisted mainly of ticking boxes on a questionnaire.
 - Particular 2. – Dr Tan admitted he prescribed MS Contin to Patient A on 18 October 2006, but denied that he did not advise the Patient when to cease taking

the drugs prior to the ROD procedure on 1 November 2006. We accepted he had advised the Patient to cease MS Contin approximately 24 hours before the ROD procedure which was in breach of the three relevant Guidelines. We were concerned that Dr Tan did not know about, or follow the relevant Guidelines and concerned that the Psych 'n Soul Clinic did not apply them. We were satisfied that Particular 2. was proven.

- Particular 3. – We noted that the relevant Guidelines specify 48 hours for cessation of drugs such as MS Contin before ROD. Dr Tan admitted he was satisfied the Patient ceased MS Contin 24 hours beforehand, we found the Particular admitted, and indeed, proven. We were satisfied that Particular 3. was proven.
- Particular 4. – We noted that the relevant Guidelines specify 48 hours for cessation of drugs such as MS Contin before ROD. However, as Dr Tan did not know about the relevant Guidelines at the time, and because his evidence was that if a patient could be free of drugs for 48 hours there would be no need for ROD, we were satisfied to the requisite standard that Particular 4. proven
- Particular 5. – We noted Dr Tan's lack of knowledge of the relevant Guidelines, and the fact that he breached the Guidelines in relation to the drug free interval required before the ROD treatment of Patient A. We were also critical of the fact that he worked in an environment where, at the relevant time, there were no arrangements to keep a patient after hours or overnight at the Clinic, and that in fact Patient A was admitted to RPAH intensive care following his discharge at approximately 5:00 pm on 1 November 2006. We were satisfied to the requisite standard that Particular 5. was proven.
- Particular 6. – Dr Tan admitted he did not contact Patient A's Methadone prescriber prior to the ROD. However he indicated a letter (unsigned), had been faxed by the Clinic. We were satisfied to the requisite standard that Particular 6. was proven.
- Particular 7. – Dr Tan worked in an environment where there were no arrangements to keep a patient after hours or overnight at the Clinic. On 1 November 2006, after the ROD, he discharged Patient A, who, (he agreed at the Inquiry), was still moderately delusional, and who required hospitalisation on the same day. He relied on the fact he no longer engages in ROD procedures. We were satisfied that Particular 7. was proven.

82. In summary the Committee was comfortably satisfied to the requisite standard, that Dr Tan has breached section 36 of the Act in relation to all the Particulars of the Complaint, in that he has demonstrated that the knowledge, skill or judgment possessed, or care exercised by him in the practice of medicine in relation to Patient A was significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience, being a registered medical practitioner who has undergone training in drug and alcohol therapies since at least 1993, and on a continuing basis since, has practised in that area since 1999, and is registered for 200 Methadone patients.

THE COMMITTEE'S FURTHER CONCERNS

83. The Committee has been sufficiently concerned with the evidence it heard about a number of issues regarding practices at the Psych 'n Soul Clinic in 2006 which were raised during the Inquiry, to make a brief comment.
84. As mentioned above, we were concerned with the Clinic's assessment documents which were mainly multiple choice questions, and with which the medical practitioner administering the ROD appears to have had little involvement. We were accordingly concerned that the procedure for selection of patients for ROD may not have been as discerning as it should have been. We are mindful that persons suitable for ROD should be persons who not only have a long history of severe drug dependence, but have undergone multiple unsuccessful attempts to manage that dependence (per Dr Wodak). The "off-label" use of a potentially harmful and unproven treatment places additional onus on treating practitioner to explain the controversial nature of the treatment, and the potential risks and benefits in significant detail.
85. We were also concerned that at the relevant time in 2006, no arrangements were made for patients to have a longer, or overnight stay at the Clinic, if that was considered necessary, and that Patient A was discharged into the care of his partner at the end of the working day after the ROD. At the time of discharge, Patient A was rated as "moderately delusional". It has already been discussed above that he spent the next seven days in RPAH, commencing with a stay in intensive care on 1 November 2006, the day of the ROD. It is likely he was not the only person with problems arising as a result of ROD in the life of the Clinic.
86. We have already expressed concern that the requirements of the three applicable Guidelines, being those of the Commonwealth, NSW and NSW Medical Board were not known to Dr Tan, and not followed at the Clinic at the relevant time in 2006.
87. The Committee was also concerned with the content of "Ultimo Rehabilitation Practice", a document which recorded the drugs administered to Patient A when he undertook the ROD treatment on 1 November 2006. Although the drugs administered to Patient A before the ROD procedure do not form part of the Complaint, the Members of the Committee felt it necessary to comment in particular on the selection, dosage of drugs and the fact nine different forms of pre-medication were administered. We noted in particular that three different forms of benzodiazepines were administered, and agreed with Dr Wodak's opinion that this was at best unwise.

ORDERS

88. Pursuant to section 61 of the *Medical Practice Act 1992* the Committee orders that Dr Tan be reprimanded.
89. Pursuant to section 61(1) the Committee imposes the following conditions on Dr Tan's registration:

- 89.1 That Dr Tan not perform rapid opiate detoxification (ROD) procedures.
- 89.2 That Dr Tan participate monthly in a peer review group relevant to his management of pharmacotherapy patients and that he provide six-monthly reports to the NSW Medical Board confirming this participation.
- 89.3 That Dr Tan authorises and consents to any exchange of information between the NSW Medical Board and Medicare Australia where such exchange is necessary to facilitate the monitoring of compliance with these conditions.
- 89.4 The NSW Medical Board is the appropriate review body for the purpose of a review under Part 6 Division 3 of the Medical Practice Act. These conditions may be varied, amended or removed at the discretion of the NSW Medical Board.

PUBLICATION OF DECISION

90. The Statement of Decision will be published in full with the following exceptions. Pursuant to Schedule 2, clause 6 of the Act, the Chairperson directs that the name, address and identity of Patient A and the Complainant is not to be disclosed.
91. This direction does not operate to exclude any provision of the Act, and does not preclude the Medical Board from undertaking its statutory functions.
92. 'Publication' may include communicating either in writing or verbally to any person.
93. Pursuant to section 180(1) of the Act the Committee provides a copy of this written Statement of Decision to:
- Dr Tan,
 - the HCCC,
 - the Complainant,
 - Dr Wodak,
 - Avant,
 - The Pharmacotherapy Credentialling Sub-Committee (NSW Health)
 - Director General, NSW Department of Health
 - NSW Medical Board.
 - As a result of the evidence provided and the summary of concerns outlined in the section of this Statement of Decision headed "The Committee's Further Concerns", the Committee also provides a copy of this written Statement of

Decision to the NSW Psychologists Registration Board, and to Mr Ross Colquhoun.

94. The Committee provides a de-identified copy of this Statement of Decision to the Australasian Chapter of Addiction Medicine, RACP for educational purposes.

APPEAL

95. An appeal against this decision is available under section 87 of the Act, or section 88 if the appeal is with respect to a point of law. Such an appeal is to be made within 28 days of the handing down of the decision (or such longer period as the Registrar may allow in any particular case).



Ms Geri Ettinger
Chairperson

12-11-09
Date