

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

**OCCUPATIONAL AND BUSINESS
REGULATION LIST**

VCAT REFERENCE NO. B32/2010

CATCHWORDS

Chinese medicine practitioner, whether procedures clinically appropriate, unprofessional conduct, whether respondent of good character.

APPLICANT	Chinese Medicine Registration Board
RESPONDENT	Mr Grant Woo
WHERE HELD	Melbourne
BEFORE	Members G. Butcher, L. Cali and X. Gu
HEARING TYPE	Hearing
DATE OF HEARING	24 May 2010
DATE OF ORDER	27 May 2010
CITATION	

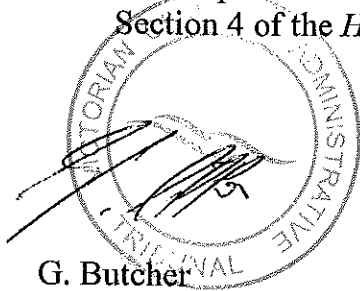
FINDINGS

- 1 The respondent engaged in unprofessional conduct within the meaning of paragraphs (a) and (b) of the definition of 'unprofessional conduct' contained in Section 3 of the *Health Professions Registration Act 2005* by carrying out a procedure which is not clinically appropriate in Chinese medicine practice in Australia and by not keeping adequate clinical records.
- 2 The respondent is not of good character.

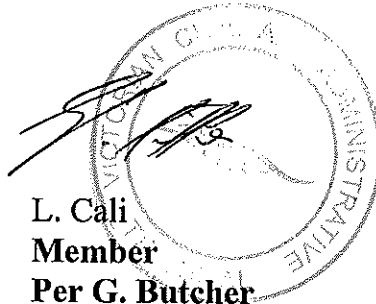
ORDER

- 1 The respondent is reprimanded.
- 2 The registration of the respondent as a Chinese medicine practitioner under the *Health Professions Registration Act 2005* is cancelled.

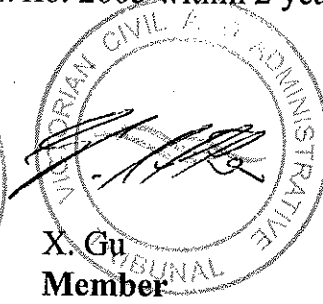
- 3 The respondent is disqualified from applying for registration under Section 4 of the *Health Professions Registration Act 2005* within 2 years.



G. Butcher
Member



L. Cali
Member
Per G. Butcher



X. Gu
Member
Per G. Butcher

APPEARANCES:

For the applicant

Dr Ian Freckleton, SC

For the respondent

Mr Guy Gilbert of Counsel

REASONS

- 1 Regulation of the Chinese medicine profession in Victoria commenced on 1 January 2002 with the coming into operation of the *Chinese Medicine Registration Act 2000*.
- 2 On 1 July 2007 the *Health Professions Registration Act 2005* came into operation and the *Chinese Medicine Registration Act 2000* was repealed.
- 3 On 31 March 2009 the *Chinese Medicine Registration Board* decided, pursuant to Section 59(2)(g) and Section 76(2) of the *Health Professions Registration Act 2005* to refer the conduct and character of Mr Grant Woo to the Tribunal for a hearing.
- 4 Some of the conduct giving rise to the hearing occurred prior to the commencement of the *Health Professions Registration Act 2005*. Relevantly, Section 169 of that Act provides:
 - (1) In the case of activities of a person who is deemed by Section 170 to be a health practitioner ... registered under this Act which occurred before the commencement of Section 163 in respect of which no investigation, inquiry, hearing or other proceeding have been commenced under the repealed provision, this Act applies to the extent that there was power to conduct an investigation, inquiry, hearing or other proceeding under the repealed provisions into those activities.
 - (2) Any determination or outcome of a hearing into those activities must be one that would have been available as a finding or decision in an investigation, enquiry, hearing or other proceeding by the responsible board under the repealed provision.
- 5 In respect of an investigation and hearing into Mr Woo's activities prior to 1 July 2007, the power to do so is derived from the *Chinese Medicine Registration Act 2000*.
- 6 Mr Woo, previously known as Hu Gou Guang, studied at the Guangzhou Medical College in China from September 1983 to July 1988 and graduated with the bachelor degree of medicine. In 1998 he graduated as a Bachelor of Applied Science in Chinese Medicine from the Royal Melbourne Institute of Technology. In or about November 2001 Mr Woo applied for registration with the Chinese Medicine Registration Board of Victoria as an acupuncturist and Chinese herbal medicine practitioner. On 15 January 2002 Mr Woo became registered with the Board in the divisions of acupuncture and Chinese herbal medicine. He renewed his registration in each division each year since 2002 and remains so registered. At all material times Mr Woo engaged in practice as a Chinese medicine practitioner.

CONDUCT ALLEGATIONS

- 7 Between 9 June 2007 and 29 August 2007, in his capacity as a Chinese medicine practitioner, Mr Woo consulted with, and treated, Ms P. In all there were 19 consultations during this period, four of which occurred prior to 1 July 2007 and the remainder of which occurred post-1 July 2007.
- 8 Mr Woo admits that during consultations which occurred in August 2007 he performed intra-vaginal treatments on Ms P without clinical justification as follows
- he inserted a mixture of Chinese herbal powder into Ms P's vagina using his (gloved) fingers
 - on one occasion he advised Ms P. that the insertion of the herbs was necessary as she had 'digestive problems'
 - Ms P. did not present with and was not diagnosed with cervical intra-epithelial neoplasia, cervical dysplasia or chronic cervicitis.
 - the insertion of herbal powder 'to hasten the healing process' was unnecessary and therapeutically inappropriate
- 9 From the statement of Ms P. the Tribunal is satisfied that she had mentioned a finding of abnormal cells shown by a pap smear but that cancer had not been diagnosed. Mr Woo has mentioned to Ms P. that in Chinese medicine if cancer is ruled out then this case is related to a range of 'chronic cervicitis' and that the main treatment for this condition would be the insertion of herbs to the tip of the cervix. It should be noted that Ms P. did not present with a medically diagnosed condition of chronic cervicitis. However, Ms P's statement goes on to say that after treatment by Mr Woo she began to feel better and that she has not had an irregular pap smear since. The Tribunal is unable to relate this result to the treatment, especially in the light of Mr Woo's admission that the treatment was unnecessary and therapeutically inappropriate.
- Mr Woo did not have adequate gynaecology experience to perform the intra-vaginal treatments. This is not clear in the light of an admission on the part of the Board that Mr Woo studied gynaecology as part of the course undertaken in China.

POOR RECORD KEEPING

- 10 Mr Woo admits that his records in relation to Ms P's treatment were not up to the standards required by the draft guidelines released by the Board in December 2006 and finalised in June 2007. In summary his record in relation to Ms P. was inadequate or non-existent in relation to her medical history, diagnosis, treatment performed, details of symptoms and signs, advice given to her by him, any referral he made of her and other relevant information.

- 11 To the extent that this conduct was engaged in prior to 1 July 2007 it is alleged that it constituted unprofessional conduct within the meaning of paragraphs (a), (b) and/or (c) of Section 3 of the *Chinese Medicine Registration Act 2000*, namely unprofessional conduct within the meaning of Section 48(1)(a) or alternatively Section 48(1)(b) of the *Chinese Medicine Registration Act 2000*. Further, it is alleged that to the extent that this conduct was engaged in subsequent to 1 July 2007 it constituted unprofessional conduct within the meaning of (a) and/or (b) of Section 3.1 of the *Health Professions Registration Act 2005*.
- 12 Mr Woo admits that his conduct constituted unprofessional conduct.

UNPROFESSIONAL CONDUCT

- 13 *Unprofessional conduct* is defined in Section 3 of the *Health Professions Registration Act 2005* as including
- (a) Conduct of a health practitioner occurring in connection with the practice of the practitioner's health profession that is of a lesser standard than a member of the public or the health practitioner's peers are entitled to expect of a reasonably competent health practitioner of that kind.
 - (b) Professional performance which is of a lesser standard than that which the registered health practitioner's peers might reasonably expect of a registered health practitioner.
- 14 Categories (a) and (b) of this definition require reference to the reasonable standards of the community and of professional peers of good repute and competence. Morris J in *Visenga v Medical Practitioners Board of Victoria*¹ observed:

I wish to repeat the words of paragraphs (a) and (b) of the definition of unprofessional conduct. In both of these paragraphs attention is directed at professional conduct which is of a lesser standard than that which might 'reasonably' be expected of a registered medical practitioner by the public or by peers of the practitioner. In my opinion, neither the public nor the peers of a medical practitioner expect perfection at all times. Human frailty visits every person, including those who are medical practitioners. Reasonable members of the public, and the reasonable peers of medical practitioners, understand this. Reasonable people are tolerant of occasional lapses, particularly if these lapses do not form a consist course of conduct or, if taken separately, are insufficiently serious to warrant intervention by those charged with acting on behalf of the State.

FINDING AS TO UNPROFESSIONAL CONDUCT IN RELATION TO MS P.

- 15 The Tribunal finds that Mr Woo engaged in unprofessional conduct within the meaning of paragraphs (a) and (b) of the *Health Professions Registration Act 2005* by carrying out a procedure which is not clinically

¹ [2004] VCAT 1044 at [33].

appropriate in Chinese medicine practice in the contemporary Australian context. Further the Tribunal finds that Mr Woo's clinical records in respect of Ms P. were significantly inadequate and that this constitutes unprofessional conduct within the meaning of paragraphs (a) and (b) of the *Health Professions Registration Act 2005*

DETERMINATION

- 16 Section 77(4) of the *Health Professions Registration Act 2005* sets out the determinations which may be made by the Tribunal with respect to a health practitioner. It should be noted that the purposes of the *Health Professions Registration Act 2005*, as set out in Section 1 of that Act include the protection of the public by providing for a common system of investigations into professional conduct of registered health practitioners. It is to be emphasised that the purpose of a proceeding such as this is not punitive. In this regard, Doyle CJ said in *Craig v The Medical Board of South Australia*²

The purpose of disciplinary proceedings is to protect the public not to punish a practitioner in the sense in which punishment is administered pursuant to the criminal law. A disciplinary tribunal protects the public by making orders which will prevent persons who are unfit to practice from practising, or by making orders which will secure the maintenance of proper professional standards. A disciplinary tribunal will also consider the protection of the public, and of the relevant profession, by making orders which will assure the public that appropriate standards are being maintained within the relevant profession. (At paragraph 41: see also *Ha v Pharmacy Board of Victoria* [2002] VSC 322.)

- 17 The Tribunal has been asked to reprimand Mr Woo in relation to the matters in which we have found unprofessional conduct. In *Peeke v The Medical Board of Victoria*³ Marks J expressed the view that a reprimand is not a trivial penalty. His Honour said that although a reprimand may be inappropriate or inadequate in many circumstances, to a professional person a reprimand had a potential for serious adverse implications. In *Medical Practitioners Board of Victoria v Swieca*⁴ the Tribunal referred to *Peeke* and said that a reprimand should not be considered a 'slap over the wrist [for the practitioners]'.
18 We reprimand Mr Woo.

CHARACTER ALLEGATIONS

- 19 What follows relates to events which occurred in or about the period of 1999 to late 2000 which is prior to the coming into operation of the *Chinese Medicine Registration Act 2000*.

² [2001] SASC 169 a(25 May 2001).

³ Unreported Supreme Court of Victoria 19 January 1994.

⁴ Occupational and Business Regulation [2009] VCAT 419.

- 20 Mr Woo admits that in or about the period of 1999 to late 2000, in his capacity as a Chinese medicine practitioner, he consulted with and treated Ms G. on approximately five occasions.
- 21 Mr Woo admits that during each of the consultations with Ms G. he failed to provide her with adequate patient modesty/privacy as required. He directed her to remove all of her clothing without providing her with a gown, draping, blanket or towel to cover herself with.
- 22 Mr Woo admits that during or about the fourth or fifth consultation with Ms G., he failed to obtain her properly informed consent prior to administering digital stimulation to an alleged acupuncture point within her vagina and prior to massaging her nipples.
- He advised her that the intra-vaginal treatment was 'very important for the treatment of hormonal imbalance'.
 - He failed to tell her about the nature of the intra-vaginal treatment and nipple massage proposed, the reason for the intra-vaginal treatment and nipple massage, the likely outcomes, advantages, disadvantages, side effects, risks and possible complications of the intra-vaginal treatment and nipple massage being undertaken.
 - He failed to advise her of the orthodox alternatives to the intra-vaginal treatment or the nipple massage.
 - During the course of the intra-vaginal treatment he told her that he needed to massage her nipples, to 'stimulate hormones'.
- 23 Further, Mr Woo admits that the intra-vaginal treatment and nipple massage was carried out without clinical justification.
- 24 Mr Woo admits that:
- He told Ms G. that there is an acupuncture point inside the vagina which is very important for the treatment of hormonal imbalance.
 - He penetrated Ms G's vagina with his fingers; and
 - He told Ms G. that he needed to massage her nipples 'to stimulate hormones'.
- 25 Two independent expert opinions submitted to the Tribunal have unequivocally stated that there is no known acupuncture point found inside the vagina.

FINDINGS

- 26 The Tribunal is satisfied that no clinical justification existed for the performance of intra-vaginal treatment and nipple massage on Ms G. by Mr Woo. The Tribunal is satisfied on the basis of expert evidence that there is no acupuncture point within the vagina. Similarly, the Tribunal is satisfied that no clinical justification exists for massage of the patient's nipples 'to stimulate hormones' in this case. In a written statement placed

before the Tribunal, Ms G. states that her main purpose for consulting Mr Woo was to obtain assistance in managing and dissuading accumulated stress and its subsequent effects on her physical and emotional health. She states that she had reasonably left a traumatic and abusive relationship and was a single parent. She provided Mr Woo with a medical and personal history and was initially treated by Mr Woo with acupuncture. Around the fifth appointment, she says that Mr Woo told her that she had a 'hormonal imbalance' which needed to be treated. Ms G. states that she had not been informed of this before by any of the doctors consulted by her or other health practitioners. She says that Mr Woo informed her that there is an acupuncture point inside a woman's vagina which he wished to use to treat her. He did not tell her any detail about what this form of acupuncture was designed to achieve nor any other potential forms of treatment for her 'hormonal imbalance', nor any potential side effects of what he was suggesting as treatment. Ms G. states that she submitted to it because he was a medical professional and that she trusted him. Ms G. goes on to state that Mr Woo told her that he had a room at a magnetic energy shop at another location and suggested that she attend him there for her 'hormonal treatment' as it would cost less. Ms G. agreed to this.

- 27 Ms G. states that Mr Woo undertook the treatment on some five or six occasions and that there was never a nurse present. He would tell her to take off all of her clothes and would not give her any garment or screening to protect her modesty or privacy. Ms G. states that this made her very uncomfortable.
- 28 Ms G. states that she became increasingly discomfited about the treatment especially when Mr Woo also commenced to stimulate her nipples by squeezing them telling her that this was also for her hormonal imbalance. He did not explain how this could be so. Eventually, Ms G. became concerned that the treatment she was receiving was not proper and was not directed towards dealing with her health needs. She expressed her concern to Mr Woo. She stated that she was not sure if Mr Woo was acting as a physician or as a man. She says that Mr Woo told her he was her doctor and asked her to massage around her belly button while he had his fingers in her vagina. Again she complied. After this consultation she did not return to Mr Woo because of her misgivings.
- 29 Mr Woo did not contest the contents of Ms G's statement.
- 30 The Board alleges that as a result of these events Mr Woo has demonstrated that he is not of good character. Mr Woo admits this.
- 31 Section 77(1)(d) of the *Health Professions Registration Act 2005* provides that the Tribunal after it has completed a hearing in relation to an application in respect of a health practitioner may find as to whether or not

the health practitioner is not of good character. In the case of *Ex Parte Tziniolis; Re Medical Practitioners Act*⁵ Holmes JA said:

‘Good character’ is not a summation of acts alone but relates rather to the quality of a person. The quality is to be judged by acts and motives, that is to say, behaviour and the mental and emotional situation accompanying that behaviour.

32 The question of good character is to be determined as at the time of the hearing. However, it is appropriate for both recent and more distant behaviour to be taken into account in arriving at an assessment of character.⁶

33 In *Tziniolis* Walsh JA said:

Reformations of character and of behaviour can doubtless occur but their occurrence is not the usual but the exceptional thing. One cannot assume that a change has occurred merely because some years have gone by and it is not proved that anything of a discreditable kind has occurred. If a man has exhibited serious deficiencies in his standards of conduct and his attitudes, it must require clear proof to show that some years later he has established himself as a different man.

34 In *Aavelaid v Dental Board of Victoria*⁷ Coldrey J stated:

The nature of the initial misconduct, the subsequent attitude of the person disqualified towards it, that persons behaviour during the period of disqualification, and the passage of time itself are all factors which will be relevant in determining whether a person has demonstrated that they are currently of good character.

35 The Tribunal is satisfied that in penetrating Ms G’s vagina with his fingers and massaging her nipples, Mr Woo was not performing any treatment which had clinical justification and that he carried out these activities for his own sexual gratification.

36 In *McBride v Walton*⁸ the majority of the New South Wales Court of Appeal approved the following factors as relevant to assessing ‘good character’.

- Whether the misconduct can be satisfactorily explained as an error of judgment rather than a defective character;
- The intrinsic seriousness of the misconduct and its relevance to practicing medicine;
- Whether the misconduct should be viewed as an isolated episode or whether it is characteristic of the practitioner;
- Any motivation which may have given rise to the proven episode of misconduct;

⁵ [1967] 1 NSW 357.

⁶ See *Re Davis* (1947) 75 CLR 409 at 416 per Latham CJ.

⁷ [1999] VSC 255 at para [75].

⁸ [1994] NSWCA 199 at page 37.

- Underlying qualities of character shown by any other acts of misconducts; and
- Whether the practitioner's conduct after the proven episode of misconduct demonstrate that public and professional confidence may be reposed in him to uphold and observe the high standards required of a medical practitioner.

- 37 Having regard to the factors set out in *McBride v Walton* the Tribunal is satisfied that Mr Woo's conduct cannot be satisfactorily explained as an error of judgment rather than a defective character. Further the Tribunal is satisfied that Mr Woo's conduct is intrinsically serious in that he performed sexually inappropriate acts upon a patient. Additionally, the Tribunal is satisfied that Mr Woo's actions had no clinical justification or therapeutic value. The inappropriateness of his actions makes them entirely inconsistent with proper practice by any health professional.
- 38 The next factor which needs to be considered is whether Mr Woo's actions should be viewed as an isolated episode or whether it is characteristic of him. The Tribunal takes into consideration in addition to the allegations which are the subject of these proceedings, the Tribunal notes that on 29 July 2009 a Professional Standards Panel of the Chinese Medicine Registration Board of Victoria found that Mr Woo had engaged in unprofessional conduct and that he may have engaged in professional misconduct in that between 15 August 2007 and 11 September 2007 he was consulted by another patient on approximately six occasions as a Chinese medicine practitioner. The Panel found that Mr Woo failed to afford or offer the patient proper privacy during the consultations, failed to adequately protect her modesty during treatment, caused her to cry during one consultation and caused her discomfort, stress, anxiety and embarrassment. The Tribunal particularly notes the findings of Mr Woo's failure to adequately protect the modesty of the patient during treatment. The Panel noted that Mr Woo appears to lack insight into what the Panel considered to be his lack of empathy with a patient and her reasonable concerns. The Panel also expressed the view that Mr Woo may when treating that patient have engaged in behaviour of a sexual and predatory nature, although the Panel did not consider that there was enough evidence for it to form a view that there was a reasonable likelihood that VCAT would find that Mr Woo had engaged in professional misconduct. The Tribunal pays particular attention to the finding of Mr Woo's failure to protect the modesty of a patient and the finding that he appeared to lack insight into what the Panel considered to be his lack of empathy with a patient and her reasonable concerns.
- 39 On the question of whether Mr Woo has shown insight into the consequences of his actions, it has been said on his behalf that in admitting the allegations and avoiding the necessity for his patients to give evidence he has shown insight and sensitivity. However, it should be noted that in the course of an investigation by the registrar of the Chinese Medicine

Registration Board of Victoria Mr Woo on 8 January 2008 denied that he ever applied herbal powder into the vagina of any female patient and on 9 January 2008 denied that he did not carry out any vaginal treatment on Ms P. He has subsequently admitted both. Whilst these statements refer to Ms P, they demonstrate a lack of truthfulness on Mr Woo's part and demonstrate a lack of honesty and forthrightness towards his professional regulatory body. This can be seen as militating against a suggestion that he has somehow rehabilitated his character.

- 40 In his response dated 12 May 2010 to the allegations, Mr Woo stated that he was unable to recall Ms G. His subsequent admission in relation to the allegations is inconsistent with this statement. The Tribunal concludes that public and professional confidence may not be reposed in him to uphold and observe the high standards required of his profession.
- 41 The further allegations in relation to Mr Woo's character relate to the non-retention of patient records and the failure to issue receipts to Ms G. in relation to payments made by her for treatment. In his response following the statement that he was unable to recall Ms G., Mr Woo stated that he did not have any file in her name and that he had no means of refreshing his memory. He went on to say that he could only respond by reference to his practice at the time of the events and that he denied any impropriety accordingly. The Tribunal finds this to be disingenuous. Despite admitting to the allegations at the hearing in his response Mr Woo stated that relying on his usual practice at the time he maintained that he offered appropriate privacy to his female patients. Again, the Tribunal finds that this inconsistency displays a lack of insight and credibility.
- 42 Mr Woo has failed to demonstrate insight into any of the following:
- The wrongfulness of his conduct.
 - Insight into why the conduct was wrongful.
 - Insight into the responsibility for the conduct.
 - Insight into the factors that brought him to behave as he did.
 - Insight into the impact of the conduct upon the victim and the profession.
 - Insight into those measures that need to be adopted by him to guard against the potential for repetition of his conduct in the future.
- 43 Having found that Mr Woo lacks credibility and insight, it is necessary to assess the likely risk to the public in allowing Mr Woo to continue to practice. It is also necessary to consider the reputation of the profession and to signal to members of the profession that certain conduct is completely unacceptable. In *Morris v Psychologist Registration Board*⁹ Harper J observed

⁹ Unreported Supreme Court of Victoria 19 November 1997.

A psychologist who fails to display insight into his or her unprofessional conduct as demonstrates an appreciation that what was done was wrong and must not recur, ought not if the public is to be protected to be allowed to practice.



44 In *Law Society of NSW v Bannister*¹⁰ Sheller JA held

The Tribunal must also act so as to deter the offender in the future and any other practitioner minded to behave in like manner. ... subjective considerations which would mitigate the sentence imposed by a criminal court may be significant if the protective exercise being undertaken by the Tribunal requires that they be taken into account. For example a solicitor who reports his misconduct to the Law Society immediately may be treated differently from one who does not, simply to encourage solicitors guilty of misconduct promptly to report it. On the whole, however, mitigating the circumstances are of considerably less significance than in the criminal sentencing process.

45 The Tribunal is not satisfied that Mr Woo has learned from the experience of being the subject of a complaint and later enquiry. This is illustrated by his inconsistent responses to questions from the investigator and the inconsistencies in his response to the allegations when compared with his admissions. This leads the Tribunal to conclude that there is a need to protect the public from the professional activities of Mr Woo.

46 The Tribunal is unable to identify sufficient, if any, mitigating circumstances which would lead to a determination other than the cancellation of Mr Woo's registration. Whilst the Chinese Medicine Registration Board of Victoria put forward a suggested determination that Mr Woo's registration be made subject to certain conditions, the Tribunal having considered the seriousness of the matters leading to the conclusion that Mr Woo is not of good character concludes that the appropriate determination is that Mr Woo's registration as a Chinese Medicine Practitioner be cancelled pursuant to Section 77(4) of the *Health Professions Registration Act 2005*. Further, the Tribunal finds that it is appropriate to disqualify Mr Woo from applying for a registration under Section 4 of the *Health Professions Registration Act 2005* within a period of two years.

G. Butcher
Member

L. Cali
Member

X. Gu
Member

GB:RB

¹⁰ Unreported New South Wales Court of Appeal 27 August 1993.