



New Zealand  
Health Practitioners  
Disciplinary Tribunal

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**DECISION NO:** 410/Med10/161P

**IN THE MATTER** of the Health Practitioners  
Competence Assurance Act 2003

**AND**

**IN THE MATTER** of disciplinary proceedings against  
**DR RATILAL MAGAN**  
**RANCHHOD,** medical  
practitioner of Auckland

**HEARING** in Auckland on 21 September 2011

**TRIBUNAL:** Mr Bruce A Corkill QC (Chairperson)  
Dr Adriana Gunder, Dr Alistair Humphrey, Dr Jan McKenzie and  
Dr Ian Stewart (Members)  
  
Ms K Davies (Executive Officer)  
Ms K O'Brien (Stenographer)

**APPEARANCES:** Mr M Heron and Ms D T Horton, for the Professional Conduct  
Committee  
  
Ms L Goffin, for Dr R M Ranchhod

**Introduction:**

1. On 14 June 2011, the High Court ordered that a charge dated 6 August 2010, which had previously been the subject of penalty and cost orders by the Tribunal, be reheard. The Court set aside the original penalty and costs orders.<sup>1</sup>
2. The charge which was the subject of the Court's orders is as follows:

*"PARTICULARS OF THE CHARGES:*

*The Professional Conduct Committee charges that:*

1. *On or about 17 July 2009 and 30 October 2009, Dr Ranchhod practised medicine while not holding a current Annual Practising Certificate or Interim Practising Certificate.*

*AND/OR*

2. *On or about 20 November 2009, Dr Ranchhod practised medicine outside the conditions imposed on his Interim Practising Certificate, which was valid from 2 November 2009 to 31 May 2010.*

*AND/OR*

3. *On or about 12 February 2010 and 17 February 2010, Dr Ranchhod practised medicine during a period of suspension imposed by the Health Practitioners Disciplinary Tribunal.*

*The conduct alleged in 1 to 3 above either separately or cumulatively amounts to professional misconduct under section 100(1)(a) and/or section 100(1)(b) of the Act, and/or the conduct alleged in 1 above separately warrants a finding under section 100(1)(d) of the Act, and/or the conduct alleged in 2 above separately warrants a finding under section 100(1)(f) of the Act, and/or the conduct alleged in 3 above separately warrants a finding under section 100(1)(g) of the Act."*

3. At the rehearing:
  - 3.1. A consent memorandum of Counsel dated 23 June 2011 was placed before the Tribunal. It confirmed that Dr Ranchhod admitted the three particulars of the charge, and that he also admitted:

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<sup>1</sup> *Ranchhod v Professional Conduct Committee* Wylie J, 14 June 2011, CIV-2010-404-008009.

- 3.1.1. That the conduct alleged in Particulars 1 to 3, either separately or cumulatively, amounts to professional misconduct under section 100(1)(b) of the Health Practitioners Competence Assurance Act (the Act);
  - 3.1.2. the conduct described in respect of Particular 1 of the charge warrants a finding under section 100(1)(d) of the Act;
  - 3.1.3. the conduct described in respect of Particular 2 of the charge warrants a finding under section 100(1)(f) of the Act; and
  - 3.1.4. the conduct described in respect of Particular 3 of the charge warrants a finding under section 100(1)(g) of the Act.
- 3.2. It was also agreed the case could proceed on the basis of an agreed summary of facts filed in respect of the first hearing (subject to the omission of one paragraph, and an understanding that paragraph 10 was not agreed and would be challenged).
  - 3.3. Counsel agreed that the Tribunal was required to consider penalty and costs matters only; that is the charge was established as set out above. Counsel confirmed that evidence as to penalty would be led from Dr Ranchhod and his former supervisor, Dr R D Mulgan; and otherwise submissions as to the appropriate penalty would be made.
4. These agreements ensured that the hearing could proceed in a constructive and efficient way.

**Agreed Summary of Facts:**

5. The Agreed Summary of Facts stated:

“1. ...

**Background**

2. *Dr Ranchhod is a registered medical practitioner who provided medical services to various organisations through a company called Housecall Services Limited ("Housecall"). Through Housecall, Dr Ranchhod and a number of other doctors, provided medical visit services to several Auckland rest homes, the Department of Corrections (Auckland Prison), the New Zealand Police, after hours private practices, group medical centres throughout the Auckland, Manukau and North Shore regions, and patients homes and workplaces between Franklin and Warkworth.*
3. *[REDACTED]*
4. *On 12 February 2008, the Medical Council imposed conditions on Dr Ranchhod's scope of practice. The conditions included weekly monitoring of Dr Ranchhod's clinical notes and decision making, and weekly attendance at a group practice meeting with peers/ The conditions imposed would cease to have effect once Dr Ranchhod had sat and attained a pass mark in the Royal New Zealand College of General Practitioners ("RNZCGP") Primex examination.*
5. *On 2 and 3 December 2008, the Medical Council met and resolved not to issue Dr Ranchhod with an Annual Practising Certificate ("APC"). However, the Medical Council did issue him with an Interim Practising Certificate ("IPC") for 13 December 2008 only, to enable Dr Ranchhod to sit the Primex examination. Correspondence to that effect was sent to Dr Ranchhod on 9 and 11 December 2008.*
6. *The 9 December 2008 letter advised Dr Ranchhod that he would no longer be able to treat patients whilst he did not have an APC. Enclosed with the 11 December 2008 letter sent to Dr Ranchhod was a copy of the Medical Council's definition of the 'practice of medicine'. The Medical Council definition set out the activities that Dr Ranchhod was prohibited from performing whilst not holding an APC. These included:*
  - *Advertising, holding out to the public, or representing in any manner that one is authorised to practise medicine in New Zealand.*
  - *Signing any medical certificate required for statutory purposes, such as death and cremation certificates.*
  - *Prescribing medicines, the sale or supply of which is restricted by law to prescription by medical practitioners or designated prescribers.*
  - *Assessing, diagnosing, treating, reporting or giving advice in a medical capacity, using the knowledge, skills, attitudes and competence initially attained for the MB ChB degree (or equivalent) and built upon in postgraduate and continuing*

*medical education (CME), wherever there could be an issue of public safety.*

7. *In December 2008, Dr Ranchhod passed the written component of the Primex examination, but failed the clinical component.*
8. *The Medical Council subsequently discovered that Dr Ranchhod had continued to practise medicine without an APC between December 2008 and January 2009. The Medical Council further discovered that on or about 19 January 2009, Dr Ranchhod had altered his previous (expired) APC and provided it to an Auckland rest home, thereby representing that he had a current APC and was able to practise medicine.*
9. *As a result of the above conduct, a charge of professional misconduct was laid by a professional conduct committee against Dr Ranchhod with the Tribunal. In respect of that charge, Dr Ranchhod admitted that his conduct amounted to professional misconduct. The Tribunal ultimately imposed the following penalties on Dr Ranchhod:*
  - a. *Dr Ranchhod was censured;*
  - b. *Dr Ranchhod was fined \$7,500;*
  - c. *Dr Ranchhod was ordered to pay costs of \$20,000;*
  - d. *Dr Ranchhod was suspended from practice for a period of two calendar months commencing on 18 December 2009 and ending on 18 February 2010; and*
  - e. *Dr Ranchhod had conditions imposed upon his resumption of practice, including that he practise in accordance with the conditions imposed by the Medical Council, that he is not to practise medicine except in a group general practice for a period of three years, and that he is not to undertake police, forensic or prison work.*

*Dr Ranchhod's conduct in respect of Particular 1*

10. *On 30 January 2009, Dr Ranchhod phoned Ms Angela Graham, Professional Standards Coordinator of the Medical Council, and asked her whether he was allowed to undertake "insurance medicals" (medical examinations for clients of insurance companies). Dr Ranchhod explained that he would not be advising patients, but rather gathering information such as height, weight, and blood pressure. Ms Graham advised Dr Ranchhod that insurance medicals would fall within the definition of 'practice of medicine' and therefore he was not authorised to perform them. A copy of Ms Graham's note of that conversation is annexed and marked "A".*
11. *In or around late February 2009, Dr Ranchhod applied to the Medical Council for an APC. On 7 April 2009, Dr Ranchhod presented a written submission to the Medical Council at a meeting to consider his*

*APC application. The Medical Council ultimately resolved not to issue Dr Ranchhod with an APC but set out a pathway for him to return to practice.*

12. *The Medical Council set out its decision in a letter to Dr Ranchhod dated 21 April 2009 (annexed and marked "B"). In summary, the Medical Council resolved to issue Dr Ranchhod with an IPC on the conditions that:
 
  - a. *Dr Ranchhod must work in a supervised position approved by the Medical Council's Medical Adviser and Registrar;*
  - b. *Dr Ranchhod must ensure that his supervisor provides reports to the Medical Council every three months; and*
  - c. *Should Dr Ranchhod wish to work in a part-time (up to half time) general practice position, Dr Ranchhod must actively prepare to sit the Primex clinical examination in 2010.**
13. *Throughout May and June 2009, Dr Ranchhod actively pursued work opportunities to enable him to obtain an IPC, however he was unsuccessful in securing a position.*
14. *On 2 July 2009, Dr Ranchhod commenced discussions with Dr Richard Hulme, Clinical Director of East Tamaki Healthcare Group ("ETHG"), and the Medical Council regarding a possible placement for Dr Ranchhod at ETHG.*
15. *On 17 July 2009, Dr Ranchhod conducted a medical examination and blood test for AXA New Zealand ("AXA") on behalf of Housecall. Dr Ranchhod completed a medical examination report (annexed and marked "C" is a copy of the final page of that report) and submitted an invoice to AXA for his services (annexed and marked "D" is a copy of the invoice and statement). Dr Ranchhod did not have an APC or IPC at the time.*
16. *On 30 October 2009, Dr Ranchhod conducted a further medical examination and blood test for AXA on behalf of Housecall. Dr Ranchhod completed a medical examination report (annexed and marked "E" is a copy of the final page of that report) and submitted an invoice to AXA for his services (annexed and marked "F" is a copy of the invoice and statement). Dr Ranchhod did not have an APC or IPC at the time.*
17. *Throughout the period from July 2009 to October 2009, negotiations with Dr Hulme and the Medical Council continued.*

*Dr Ranchhod's conduct in respect of Particular 2*

18. *On 2 November 2009, the Medical Council issued Dr Ranchhod with an IPC, enabling him to commence work as a sessional GP at the Manurewa clinic of the ETHG. Annexed and marked "G" is a copy of the IPC issued by the Medical Council. The IPC was valid from*

2 November 2009 until 31 May 2010, and was subject to the following conditions:

- a. *Dr Ranchhod must undergo weekly monitoring of his clinical notes and decision making;*
  - b. *Dr Ranchhod must meet with peers in a group practice at least once a week to review the clinical management of his cases;*
  - c. *The above two conditions will cease to have effect once Dr Ranchhod has sat and passed the Primex examination;*
  - d. *Dr Ranchhod must work in a group general practice setting approved by the Council's Registrar;*
  - e. *Dr Ranchhod must work in a supervised position approved by the Council's Medical Adviser and Registrar;*
  - f. *Dr Ranchhod must ensure that his supervisor reports to the Council every three months; and*
  - g. *Dr Ranchhod must actively prepare to sit Primex in 2010.*
19. *On 20 November 2009, Dr Ranchhod conducted a medical examination and blood test for AXA on behalf of Housecall. At the time, Dr Ranchhod held a current IPC. However, the medical examination and blood test fell outside the conditions imposed by the Medical Council on Dr Ranchhod's scope of practice as Dr Ranchhod was only permitted to practise medicine in a supervised, group general practice setting approved by the Council.*

*Dr Ranchhod's conduct in respect of Particular 3*

20. *As outlined at paragraph 9 above, on 14 December 2009 the Tribunal conducted a hearing relating to Dr Ranchhod's previous conduct in practising medicine without an APC, and altering his expired APC. In relation to that conduct, the period of suspension imposed by the Tribunal on Dr Ranchhod was effective from 18 December 2009 to 18 February 2010.*
21. *On 12 February 2010, Dr Ranchhod conducted a medical examination, including blood pressure recordings, for AXA on behalf of Housecall. At the time, Dr Ranchhod was subject to the period of suspension imposed by the Tribunal. Dr Ranchhod completed a medical examination report (annexed and marked "H" is a copy of the final page of that report) and submitted an invoice to AXA for his services (annexed and marked "I" is a copy of the invoice).*
22. *On 17 February 2010, Dr Ranchhod conducted a further medical examination for AXA, on behalf of Housecall. Again, Dr Ranchhod was at that time subject to a period of suspension imposed by the Tribunal. Dr Ranchhod completed a medical examination report (annexed and marked "J" is a copy of the final page of that report) and submitted an*

*invoice to AXA for his services (annexed and marked "K" is a copy of the invoice).*

*Interview with Dr Ranchhod*

23. *Dr Ranchhod was interviewed by the Professional Conduct Committee ("PCC") on 13 June 2010 in relation to his conduct. Dr Ranchhod's counsel, Ms Lee Goffin, was present at the meeting.*
24. *During the meeting, Dr Ranchhod confirmed that he had conducted medical examinations for AXA, on behalf of Housecall, including:*
  - a. *On 17 July 2009 and 30 October 2009, while not holding a current APC or IPC;*
  - b. *On 20 November 2009, outside the scope of the conditions imposed on his IPC; and*
  - c. *On 12 and 17 February 2010, during a period of suspension imposed by the Tribunal.*
25. *In explanation, Dr Ranchhod stated that he saw the insurance medical work as being separate from clinical work. Dr Ranchhod stated that he was desperate to keep Housecall going and saw very few solutions at the time. Dr Ranchhod said he was being pressured by those requiring the services he had provided in the past, but due to losing other doctors from Housecall he was unable to send anyone to the number of urgent requests he was receiving. Dr Ranchhod acknowledged to the PCC that one of the insurance medicals he performed (on 17 February 2010) was within one day of his suspension being lifted. Dr Ranchhod stated that he could not have been thinking logically at the time.*

*Previous appearances*

26. *As set out above, Dr Ranchhod has appeared before this Tribunal once before and was found guilty of professional misconduct on that occasion."*

**Further Evidence:**

6. Dr Ranchhod gave detailed evidence. This included:
  - 6.1. Details of his professional background.
  - 6.2. A description of the development of a company called Housecall Services Ltd ("Housecall") in 1998 which provided a service whereby medical practitioners would travel to see patients in areas of need such as rest homes and private hospitals, residential care services, palliative care and hospice services, Police,

prisons, the Justice system and services for the elderly and disabled.

- 6.3. Evidence as to the wide geographical area in which these services were rendered in the Auckland province, and the extensive demands which this entailed, particularly for Dr Ranchhod as the main provider of the services (although in time the company employed other medical practitioners and support persons).
- 6.4. Evidence about the professional issues which arose, and the various restrictions which were imposed by MCNZ as described in the Agreed Summary of Facts. Dr Ranchhod explained the background to these issues, which included professional isolation, and a degree of "*burn out*" which had been described as him becoming "*snow blind*". Dr Ranchhod accepted that he had lost a degree of objectivity, because he had an overriding compulsion to ensure that persons who asked for his services would not be let down. These pressures in the end had a significant professional and personal toll, which he described in detail.
- 6.5. Evidence as to Dr Ranchhod's understanding of the various limitations that were imposed by MCNZ; and the publicity which followed the Tribunal decision given in December 2009, following which he was unable to resume work with the group practice at which he had been employed for some weeks prior to the Tribunal hearing.
- 6.6. A description of the subsequent consequences, including the winding up of his company in April 2010.
- 6.7. Finally, evidence as to the insurance medical examinations which are the subject of the particulars of the charge. Dr Ranchhod said he was totally wrong in not viewing these appointments as "*medical practice*" and outside the conditions imposed. He could only attribute this to total exhaustion, worry and some desperation. He also explained his current circumstances, which are that

he is in receipt of an unemployment benefit, but about to commence a role which he hoped would provide him with a reasonable income. He also outlined his current financial circumstances.

- 6.8. Dr Ranchhod was questioned by Counsel for the PCC, particularly with regard to the question of whether he had been advised by staff at MCNZ in January 2009 that the undertaking of insurance medical examinations would amount to the practise of medicine; he also conceded that the decision to undertake insurance examinations during a period of suspension imposed by the Tribunal in December 2009 was a deliberate breach of the Tribunal's orders.
7. A bundle of documents was placed before the Tribunal by Dr Ranchhod which gave the Tribunal further information relating to the extended negotiations he had had with MCNZ in 2009, details of a psychiatric diagnosis of a major depressive disorder which was made in May 2009, along with an updated report from the same psychiatrist for the purposes of the present hearing; and references from professional persons with whom he had interacted and who spoke of him positively.
8. Dr Mulgan in his evidence explained that he had originally worked for Dr Ranchhod's company from March 2008, visiting rest homes and being part of the mobile doctor service at weekends. He set up a company offering similar services in May 2009. The rest home contracts which Housecall originally held were ultimately transferred to his company when Dr Ranchhod was no longer able to do this work. He indicated that he had acted as supervisor for Dr Ranchhod in late 2008 and was willing to act as a supervisor again if called on.

**Chronology:**

9. From the totality of the evidence that was before the Tribunal, the key dates are as follows:

- 9.1. February 2007: a Performance Assessment Committee review instituted by MCNZ was undertaken.<sup>2</sup>
- 9.2. 12 February 2008: MCNZ imposed conditions on Dr Ranchhod's scope of practice.<sup>3</sup>
- 9.3. 2, 3 December 2008: MCNZ determined that no APC would be issued; an interim practising certificate was given for 13 December only, so as to enable Dr Ranchhod to sit the Primex examination.<sup>4</sup> Otherwise he was to cease practice.
- 9.4. December 2008: Dr Ranchhod passed the written component of the Primex examination, but failed the clinical component.<sup>5</sup>
- 9.5. December 2008-January 2009: notwithstanding the absence of approval to practise, Dr Ranchhod did so; and he also altered a previous APC.<sup>6</sup>
- 9.6. 22 January 2009: Dr Ranchhod ceased practise, until 1 November 2009.<sup>7</sup>
- 9.7. 21 April 2009: MCNZ declined an application for APC, but established a pathway for return to practice.<sup>8</sup>
- 9.8. Late April 2009: Dr Ranchhod and directors discussed whether Housecall should be wound up.<sup>9</sup>
- 9.9. 2 July 2009: Dr Ranchhod commenced discussions with a practice for possible employment.<sup>10</sup>
- 9.10. 17 July 2009: an AXA medical examination via Housecall was conducted by Dr Ranchhod, with no APC being held.<sup>11</sup>

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<sup>2</sup> Ranchhod brief, para 27

<sup>3</sup> ASF para 4

<sup>4</sup> ASF para 5

<sup>5</sup> ASF para 7

<sup>6</sup> ASF para 8 Ranchhod brief para 41

<sup>7</sup> Ranchhod brief para 44

<sup>8</sup> ASF para 12

<sup>9</sup> Ranchhod brief para 45

<sup>10</sup> ASF para 14

<sup>11</sup> ASF para 15

- 9.11. 30 October 2009: an AXA medical examination via Housecall was conducted by Dr Ranchhod, with no APC being held.<sup>12</sup>
- 9.12. 2 November 2009: MCNZ issued an APC with conditions for the period of 2 November 2009 to 31 May 2010.<sup>13</sup>
- 9.13. 20 November 2009: an AXA medical examination via Housecall was conducted by Dr Ranchhod, in breach of the IPC conditions.<sup>14</sup>
- 9.14. 14 December 2009: the Health Practitioners Disciplinary Tribunal imposed penalties, including suspension from practice from 18 December 2009 for two calendar months.<sup>15</sup>
- 9.15. 12 February 2010: an AXA medical examination via Housecall was conducted by Dr Ranchhod, in breach of the Tribunal's orders.<sup>16</sup>
- 9.16. 17 February 2010: an AXA medical examination via Housecall was conducted by Dr Ranchhod, in breach of the Tribunal's orders.<sup>17</sup>
- 9.17. February 2010: the practice with whom Dr Ranchhod had been working in late 2009 was unwilling, in the circumstances which had occurred resulting in his suspension, to resume his employment.
- 9.18. 9 November 2010: the first Tribunal hearing related to the present charge was held.
- 9.19. April 2010: Housecall Services Ltd was wound up.<sup>18</sup>
- 9.20. 18 May 2011: the hearing of the appeal against the decision of the first Tribunal hearing was held in the High Court.
- 9.21. 14 June 2011: the judgment of the High Court was delivered, directing a rehearing of the penalty and costs orders.

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<sup>12</sup> ASF para 16

<sup>13</sup> ASF para 18, Ranchhod brief para 58

<sup>14</sup> ASF para 19

<sup>15</sup> ASF para 20, Ranchhod brief para 61, Decision 237/Med09/129P, at para

<sup>16</sup> ASF para 21

<sup>17</sup> ASF para 22

<sup>18</sup> Ranchhod brief para 70

10. It will be seen from the foregoing that the circumstances giving rise to the particulars described in the charge are somewhat complex. The Tribunal made it clear at the hearing that it was not its role to relitigate any of the previous decisions that had resulted in restrictions on practice being imposed; the focus of this hearing had to be on the particulars of the charge and the correct penalty and costs orders that should flow from the established breaches.

**Penalty Principles:**

11. In determining the appropriate penalties, the Tribunal recognised the following functions of disciplinary proceedings:
- 11.1. To protect the public – this object is reinforced by section 3 of the HPCA Act;
  - 11.2. to maintain professional standards – this object is emphasised in *Taylor v General Medical Council* [1990] 2 All ER 263; *Ziderman v General Dental Council* [1976] 2 All ER 344 and *Dentice v The Valuers Registration Board* [1992] 1 NZLR 720;
  - 11.3. to punish the practitioner in question, as referred to in *Dentice v The Valuers Registration Board* (Supra) and *Patel v Complaints Assessment Committee* (CIV-2007-404-1818, 13 August 2007 Lang J);
  - 11.4. where appropriate, to rehabilitate the practitioner, as referred to in *J v Director of Proceedings* (CIV-2006-404-2188, 17 October 2006, Baragwanath J), and *Patel* (supra).
12. In *A v PCC* (5 September 2008, Keane J, CIV-2008-404-2927), the Court discussed carefully the range of sanctions available to the Tribunal, particularly cancellation and suspension.<sup>19</sup> The Court stated that four points could expressly be derived from the authorities, and implicitly a fifth:

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<sup>19</sup> Paras 77-82

“[81] *First, the primary purpose of cancelling or suspending registration is to protect the public, but that ‘inevitably imports some punitive element’. Secondly, to cancel is more punitive than to suspend and the choice between the two turns on what is proportionate. Thirdly, to suspend implies the conclusion that cancellation would have been disproportionate. Fourthly, suspension is most apt where there is ‘some condition affecting the practitioner’s fitness to practise which may or may not be amenable to cure’. Fifthly, and perhaps only implicitly, suspension ought not to be imposed simply to punish.*

[82] *Finally, the Tribunal cannot ignore the rehabilitation of the practitioner: B v B (HC Auckland, HC4/92, 6 April 1993) Blanchard J. Moreover, as was said in Giele the General Medical Council [2005] EWHC 2143, though “... the maintenance of public confidence ... must outweigh the interest of the individual doctor”, that is not absolute – “the existence of the public interest in not ending the career of a competent doctor will play a part”.*”

13. In numerous cases, the need to consider and explain why lesser options have not been adopted is emphasised. But the Tribunal has to proceed on the basis of what is appropriate having regard to the public interest, and the need to maintain public confidence in the profession.<sup>20</sup> Randerson J put the matter in this way:

“[30] *The consequences of removal from a professional register are ordinarily severe and the task of the Tribunal is to balance the nature and gravity of the offences and their bearing on the dentist’s fitness to practise against the need for removal and its consequences to the individual: Dad v General Dental Council [2002] 1 WLR 1538. As the Privy Council further observed at 1543:*

*Such consequences can properly be regarded as inevitable where the nature or gravity of the offence indicates that a dentist is unfit to practise, that rehabilitation is unlikely and that he must be suspended or have his name erased from the register. In cases of that kind greater weight must be given to the public interest and to the need to maintain public confidence in the profession than to the consequences of the imposition of the penalty to the individual.*

[31] *I respectfully adopt the observations of the Privy Counsel and would add that it is incumbent on the Tribunal to consider carefully the alternatives available to it short of removal and to explain why the lesser options have not been adopted in the circumstances of the case. As well, while absolute consistency is something of a pipe dream, and cases are necessarily fact dependent, some regard must be had to maintaining reasonable consistency with other cases. That is necessary to maintain the credibility of the Tribunal as well as the confidence of the profession and the public at large.”<sup>21</sup>*

<sup>20</sup> *Patel*, supra, para 30 per Lang J; *L v The Director of Proceedings*, Woodhouse J, 25 March 2009, CIV-2008-404-2268 [47-48]

<sup>21</sup> *Patel v The Dentists Disciplinary Tribunal* HC AK AP77/02, 8 October 2002

**Counsel's Submissions:**

14. Counsel for the PCC submitted in summary that the appropriate penalty for the established charges was cancellation of registration, although it was acknowledged the Tribunal could also consider suspension. Counsel for the practitioner submitted in summary that cancellation would be wholly excessive; that the Tribunal should recognise that no harm was caused, and that Dr Ranchhod was working under severe stress and depression when the offences occurred.
15. Both Counsel referred in their submissions to other decisions which it was contended could be of assistance to the Tribunal in determining the appropriate penalty.
16. The PCC highlighted the cases of:
  - 16.1. *Davis*<sup>22</sup> - in this case, the practitioner admitted two charges of professional misconduct for holding herself out as being a registered nurse when she was not in fact so registered but was an enrolled nurse. In obtaining her employment she had falsified an APC. Cancellation was considered appropriate given the seriousness of the offending, and other factors such as the fact that she had put patients at risk "*knowingly and willingly*" if not intentionally. This case involved a deliberate subterfuge, and evidence of a persistent pattern of dishonesty. Apart from the APC irregularities, it involved different features to that which arose in the present case.
  - 16.2. *Gilgen*<sup>23</sup> - Dr Gilgen was found guilty of profession misconduct for (a) forging the signature of another doctor on three prescription forms to obtain anabolic steroids for patients whilst his APC was suspended by MCNZ and (b) attempting to order prescription medicines by email from New Zealand and Singapore whilst his APC was suspended. Despite a submission that an order should be made which would allow him to return to practice on conditions

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<sup>22</sup> 148/Nur07/77P

<sup>23</sup> 149/Med07/60P and 07/61P

previously imposed by MCNZ, the Tribunal noted this had been attempted twice previously, and this had not produced a satisfactory outcome. Consequently, the only responsible outcome was cancellation of registration. This case had as its genesis a background of serious prescribing issues including the over prescribing of benzodiazepines. In the Tribunal's view, it is far from similar to the present case notwithstanding the common factor of APC irregularities.

17. Counsel for Dr Ranchhod referred to:

17.1. A number of APC cases such as *H*<sup>24</sup> and *O*.<sup>25</sup>

These were decisions where the sole infringement was the failure to hold an APC. These cases were of limited assistance, given Particular 3 in the present case which involved a deliberate breach of the orders of the Tribunal.

17.2. Other cases where, despite serious offending, suspension was seen as preferable to cancellation.<sup>26</sup> The principal submission which Counsel for Dr Ranchhod made was that consistency should be sought if at all possible. However, Counsel accepted that there were no previous cases where a practitioner had breached an order of the Tribunal, and where an order of suspension was made. Indeed the only previous decision relating to a charge which included a Particular alleging a breach of a Tribunal order is *Bhatia* (358/Med10/151P); in that instance the practitioner's registration was cancelled.

18. In summary, only limited assistance is able to be obtained from the cases referred to by Counsel, given their differing circumstances.

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<sup>24</sup> 256/Psy09/128P

<sup>25</sup> 274/Ot09/132P

<sup>26</sup> *Chiew180/Phar08/95P; Patel 59/Med06/36D; A v PCC (Supra); Patel, (Supra)*

**The Tribunal's decision:**

19. The Tribunal considers there are the following aggravating factors:

19.1. Particular 3 related to a deliberate breach of the Tribunal's orders; and the nature of that breach was in relation to a similar type of offence for which Dr Ranchhod had been penalised by the Tribunal in the first place (practising medicine when not authorised to do so).

19.2. Particular 1 included practising medicine while not holding a current APC or IPC; although these particular breaches took place before the Tribunal considered an identical breach (practising medicine between 11 December 2008 and 22 January 2009 while not holding a current APC, the relevant hearing taking place on 14 December 2009), this was nonetheless a second charge of practising medicine whilst not holding an APC.

19.3. Dr Ranchhod's view that he felt obliged to carry out the medical examinations for insurance clients, because he was not able to obtain doctors to do so, was not an adequate or persuasive explanation:

19.3.1. It was apparent from Dr Mulgan's evidence that the major proportion of work carried out by Housecall related to rest homes, and that he had been engaged in this work from mid 2009. Given this evidence, the Tribunal was not satisfied that the viability of the company was dependent on Dr Ranchhod.

19.3.2. Dr Ranchhod did not check with AXA to establish whether a nurse could perform the insurance examinations, if a doctor was in fact not available.

19.3.3. Dr Ranchhod told the Tribunal that only a doctor could carry out such an examination, yet he also told the Tribunal that he had done the work because it was not "clinical work"; such amounting to an inconsistent explanation.

19.4. Dr Ranchhod displayed a lack of insight and self monitoring as to the significance of the breaches which occurred. Although he stated in evidence that he was "*totally wrong*" to examine patients outside his limitations of practice, the Tribunal did not consider that he had a sufficient appreciation of the public health and safety issues involved. The Tribunal finds he had clearly been advised by the MCNZ on 30 January 2009 that insurance medicals would fall within the definition of "*practice of medicine*" and that he was therefore not authorised to perform them. He told the Tribunal that he could not recall this conversation, but since it was an inquiry which he himself initiated, the Tribunal cannot accept that explanation.

Dr Mulgan explained to the Tribunal that in January 2009 it was brought to his attention that Dr Ranchhod was not shown on the MCNZ website as being registered; he telephoned MCNZ staff and established this was correct, and then brought the issue to the attention of Dr Ranchhod, encouraging him to contact MCNZ urgently as to his status. This happened. This was a yet further example of the issues being brought specifically to his attention in a clear way; thereafter it must have been apparent to him that it was impermissible for him to practise medicine unless specifically authorised to do so.

20. The Tribunal considers there are the following mitigating factors:

20.1. Over the period covered by the particulars, there is evidence that Dr Ranchhod was suffering from the effects from overwork, and the stress of significant uncertainty concerning his professional future. He was isolated both professionally and personally. Whilst this situation was of his own making, the Tribunal recognises that it is a mitigating context for the particulars it is required to consider.

20.2. A related issue is that, for the period relating to the particulars, Dr Ranchhod has been diagnosed as having a depressive disorder which was moderate

through the period in question (and by the time of the hearing before the Tribunal there were mild residual symptoms only).

- 20.3. There is no evidence that any of the insurance patients were harmed by the examinations carried out on the occasions described in the charge.
- 20.4. Dr Ranchhod has cooperated in a significant way for the purposes of the two hearings relating to the present charge. Both hearings were able to proceed on the basis of an Agreed Summary of Facts.
- 20.5. It is regrettable that this charge has had to be the subject of two hearings before the Tribunal. That circumstance is in no way Dr Ranchhod's fault. The consequence is that Dr Ranchhod has had to face the arduous process of a difficult hearing before the Tribunal twice. To a degree that will have been salutary. But it has also been onerous.
21. The Tribunal has carefully considered the sentencing objects set out in paragraphs 11–13 above. In normal circumstances, a deliberate breach of an order of the Tribunal would require the Tribunal to give a very firm response: cancellation of registration could well be appropriate. In this instance, however, given the complex background and the significant steps that have been undertaken to encourage Dr Ranchhod to take a positive path to enhanced competency, the Tribunal must also consider the public interest in not ending the career of a practitioner who is capable of being properly rehabilitated. The Tribunal is also mindful of the requirement that it must impose the least restrictive limitation that it can.
22. The Tribunal considers that a fair and proportionate response to the offending can be met through a mix of suspension and conditions.
23. Suspension is necessary in order to make it very clear to Dr Ranchhod and all other practitioners that the regulatory limitations and the orders of the Tribunal which were imposed should have been taken very seriously indeed. The Tribunal is also very concerned indeed that, notwithstanding the previous advice that had been given to him

by both MCNZ and a colleague, Dr Ranchhod was nonetheless prepared to breach the restrictions on him, and in the case of the Tribunal orders, to do so deliberately.

24. The least restrictive penalty which could possibly be considered on the present facts is suspension. In that regard the Tribunal has given careful consideration to the dicta of Lang J in *McDonald v Professional Conduct Committee*<sup>27</sup> and the discussion therein as to the appropriate period of suspension in a given case.<sup>28</sup> The Court, after reviewing a schedule of suspension outcomes that had been placed before it, stated that "... *practitioners who have been suspended for nine months or more have generally been found guilty of criminal wrongdoing including, in particular, offences including fraud and dishonesty*". In that instance, where there were breaches amounting to negligence, the Court considered a starting point of seven months' suspension was appropriate.
25. The present case has the serious element, just discussed, of a deliberate breach of the Tribunal's orders. The Tribunal accordingly considers that a starting point of nine months suspension is appropriate. However, that the present charge has been the subject of two hearings and an appeal, and has taken some time to finalise, has meant Dr Ranchhod has had the worry and stress of the matter being unresolved for some time. A discount is accordingly appropriate. The Tribunal determines that the correct period of suspension which will take all factors into account is therefore seven months.
26. So as to address the rehabilitative aspects, the Tribunal considers there should be supervision following the period of suspension, along with other conditions designed to ensure that the public health and safety factors are met. The following conditions will apply for three years after the resumption of practice following suspension:

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<sup>27</sup> 10 July 2009, CIV-2009-404-1516

<sup>28</sup> Paras[91]-[101]

- 26.1. Dr Ranchhod is to work in a group general practice, approved by MCNZ. The Tribunal wishes to ensure that he will not practise in isolation for the period of the condition.
- 26.2. To ensure there is ongoing monitoring of his practice, Dr Ranchhod is to be supervised as follows:
  - 26.2.1. The supervisor is to be approved by MCNZ.
  - 26.2.2. Dr Ranchhod is to meet with the supervisor monthly on a one to one basis, the focus of supervision to include clinical issues and issues of professional compliance in respect of obligations of a regulatory nature.
  - 26.2.3. The supervisor is to report to MCNZ quarterly.
  - 26.2.4. The costs of supervision are to be met by Dr Ranchhod.
- 26.3. Dr Ranchhod is to meet with peers in a group practice at least once a week to review the clinical management of his cases. Details of Dr Ranchhod's participation in a peer group are to be approved by his supervisor.
27. The Tribunal draws to the attention of MCNZ that consideration may need to be given from time to time to the issue of whether there is any mental health impairment, such as should be considered by the Health Committee.
28. The final matter for determination is the issue of costs. There was a consensus between Counsel that the costs in relation to the first Tribunal hearing relating to this charge should be considered by this Tribunal, rather than the costs of the second hearing.
29. Those costs and expenses are:
  - 29.1. For the PCC, \$32,000.00 (not including GST).
  - 29.2. For the Tribunal hearing, \$15,700.00 (not including GST).
30. The normal starting point for the consideration of costs is to take 50% of reasonable costs, and either increase or decrease that sum, depending on the particular

circumstances of the case.<sup>29</sup>

31. In this case, the PCC submitted, having regard to the cooperation given by Dr Ranchhod, that the starting point should be 30%, but increased to 40% because Dr Ranchhod had reoffended within a relatively short period of time. Counsel for the practitioner submitted that the appropriate proportion would be 30%.
32. The Tribunal does not accept there should be an uplift for the reasons given for the PCC. Reoffending is a relevant factor when determining substantive penalties; that issue has been considered above. The practitioner should not be penalised again at the costs stage.
33. The Tribunal considers that the correct amount is therefore, the PCC's starting point agreed to by Counsel for the practitioner, namely 30% of reasonable costs.
34. The Tribunal is also required to take into account the financial circumstances of the practitioner. He is undoubtedly impecunious at present. At the time of the hearing Dr Ranchhod was in receipt of an unemployment benefit, though he gave evidence of employment which is about to commence, and which he hopes will provide him with a reasonable salary in the not too distant future.
35. In all the circumstances, the Tribunal considers the fair approach is to order that costs of 30% be paid, but that it would be appropriate for Dr Ranchhod to discuss his financial circumstances with MCNZ with a view to consideration being given to a payment arrangement.

### **Conclusion**

36. The charge of professional misconduct, and under Sections 100 (1)(d), 100 (1)(f) and 100(1)(g) is established.
37. Dr Ranchhod is suspended for a period of seven months, as from the date which is 4 days after the decision is posted to him.

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<sup>29</sup> Refer *Vatsyayann*: 374/Med10/152P, para 40

38. The following conditions shall apply for a period of three years after the resumption of practice, following suspension:
- 38.1. Dr Ranchhod is to work in a group practice, approved by the MCNZ.
- 38.2. Dr Ranchhod is to be supervised as follows:
- 38.2.1. The supervisor is to be approved by the MCNZ
- 38.2.2. Dr Ranchhod is to meet with the supervisor monthly on a one to one basis, the focus of supervision to include clinical issues and issues of professional compliance in respect of obligations of a regulatory nature.
- 38.2.3. The supervisor is to report to MCNZ quarterly.
- 38.2.4. The costs of supervision are to be met by Dr Ranchhod.
- 38.3. Dr Ranchhod is to meet with peers in a group practice weekly to review the clinical management of his cases. Details of Dr Ranchhod's participation in a peer group are to be approved by his supervisor.
- 38.4. Dr Ranchhod is to pay costs as follows:
- 38.4.1. In respect of the costs of the PCC, \$9,600.00 (GST is not payable).
- 38.4.2. In respect of the costs of the Tribunal, the sum of \$4,710.00 (GST is not payable).
- 38.5. The Tribunal directs that a copy of this decision and a summary be placed on the Tribunal's website. The Tribunal further directs that a notice stating the effect of the decision be placed in the *New Zealand Medical Journal*.

**DATED** at Wellington this 14<sup>th</sup> day of October 2011

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B A Corkill QC  
Chairperson  
Health Practitioners Disciplinary Tribunal