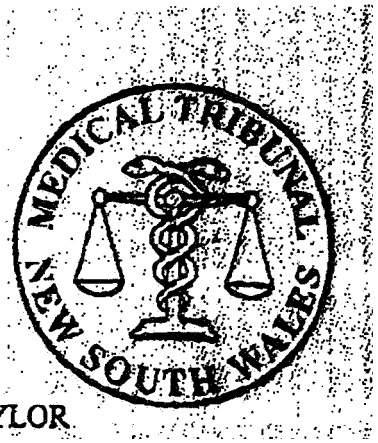

MEDICAL TRIBUNAL OF NEW SOUTH WALES

DEPUTY CHAIRPERSON: HIS HONOUR JUDGE K V TAYLOR

MEMBERS: DR D I GRIMES
DR P R GORDON
MS D J ROBINSON

NO: 40018/00 - IN THE MATTER OF GEOFFREY WALTER EDELSTEN

REASONS FOR DETERMINATION

Introduction

Overview of the proceedings and issues, Tribunal not satisfied the applicant has reformed his character.

This is an application by Geoffrey Walter Edelstein, made, pursuant to s.92 of the *Medical Practice Act, 1992* for review of an order of the Medical Tribunal of New South Wales which, on 29 November 1988, deregistered him and set period of ten years before he could seek to be restored to the Register. The 1998 Tribunal found that the applicant was not a person of good character and that he had been guilty of misconduct in a professional respect. The most serious misconduct found by the Tribunal was the applicant's commission of the offence of soliciting a criminal, whom he believed to be a standover man and murderer, Christopher Dale Flannery, to intimidate a former, patient. Five other transgressions, involving over servicing and other misconduct, are fully described later in these reasons. They resulted in concurrent deregistration orders for lesser periods, a period of suspension, a fine and reprimands. In the

result the applicant was not entitled to seek reregistration until. 29, November 1999. He now seeks an order that he be restored to the Register of Medical Practitioners in New South Wales.

Essentially, the applicant contends he is now a fit and proper person to be registered as a medical practitioner and can be relied upon to practise medicine in a professional manner. In the broadest outline, his case is that no one is beyond reformation. If the Tribunal accepts the statements of the applicant as to his changed character and, what may be described as, the context in which the previous misconduct occurred, it should reregister him.

The 1988 findings are very serious indeed and represent a significant, challenge to the applicant in demonstrating that he can now be entrusted with the practice of medicine in the community of New South Wales. The respondent contends that nothing has changed.

To determine whether the applicant is a fit and proper person to be registered as a medical practitioner, competent to practise medicine, and is of good character the Tribunal has heard extensive evidence covering the whole period of his studies and working life. It has reviewed his background and the conduct that led to his deregistration. His conduct and efforts to rehabilitate himself since have been the subject of considerable oral and documentary evidence. The linchpin of the applicant's case was his evidence. The Tribunal has carefully considered his present conduct and attitudes and his present attitude to his past misconduct. It is common ground that, for a long period, the applicant did not accept that conduct. What is at issue now is the nature and extent of his present acceptance of his past misconduct, his remorse and contrition. In carrying out this task the Tribunal bears in mind that it is required to make its judgement as to the character of the applicant at the time of determining this application.

The applicant's solicitor complained that this process involved, in effect, a retrial of the applicant and argued that the Tribunal should not consider such material but rather concentrate on the present expressions of contrition and remorse of the applicant.

The Tribunal concluded that the applicant's conduct since 1988 and his background bear upon his reformation and give insight into his present fitness to practise medicine. It had been a long while since the events of 1984 and in considering the evidence the Tribunal has been concerned to give appropriate temporal weight to it. The extent to which it has done so appears from these reasons.

Some issues and findings in these reasons arc best discussed and explained under a heading covering a specific period of time, others by their subject matter. They overlap to the degree indicated in the text. A number of themes permeate these reasons and we identify them here for convenience. They include the extent of the applicant's insight into his misconduct, his recall of past events, and material that has led the tribunal to conclude that the applicant has not been frank in his evidence. The root cause of the applicant's difficulties has been his own professional misconduct and criminal behavior. However, he continues to deflect blame for his actions upon others and regard himself as a victim. He demonstrates a lack of insight into his behaviour which revealed itself a number of times during the course of evidence.

The 1988 Tribunal made the following finding against the applicant:[1]

> *In the respondent's appearances before the Tribunal, he has misled and played with it, sought to qualify his earlier statements when their veracity or credibility has been questioned , distanced himself from decisions and procedures relating to his organisation when he has thought that they have been seen in an unfavourable light. He gave, at times, testimony so unhelpful as to be designed*

[1]Exhibit 1,Tab1 at 92.3.

to conceal the true situation. He presented himself as a paragon of unblemished medical virtues and competencies. In striving towards those ends the he has failed to paint a self- portrait of an honourable, if fallible, human.

The Tribunal considers that this passage from the 1988 Tribunal still fairly describes the applicant and that he has not rehabilitated himself to the extent necessary to be entrusted with the practice of medicine.

The 1988 Medical Tribunal

The 1988 Medical Tribunal findings as to complaints proved, an unsuccessful appeal, Tribunal Imposes penalties.

The 1988 Tribunal, in its Reasons for Decision dated 27 April 1988 found the following complaints proved.

1. That the applicant is not of good character in that, between approximately 10 January 1984 and approximately 15 April 1984, he had a conversation with a criminal, whom he believed to be a professional standover man and murderer, with a view to obtaining his assistance to intimidate by threats or violence a former patient whom the applicant alleged was, harassing him.

2. That the applicant has been guilty of misconduct in a professional respect in that between 1978 and 1984, he attempted to induce medical practitioners to whom he offered work as consultants or employees to over-service their patients by offering to enter into agreements with the said medical practitioners whereby they would be paid commissions for referring patients to specialist medical practitioners and/or companies associated with the applicant.

[2] Exhibit 1, Tab 1

3. That the applicant has been guilty of misconduct in a professional respect that between 1978 and 1984, he did in fact offer inducements to medical practitioners who worked as consultants or employees for him and/or companies associated with him, to over-service their patients by paying the said medical practitioners commission for referring patients to specialist medical practitioners and/or companies associated with the said Geoffrey Walter Edelsten.

4. That the applicant has been guilty of misconduct in a professional respect in that between January 1985 and January 1986 he and companies of which he was a Director participated in a fee-sharing arrangement with other medical practitioners whereby he and the said companies improperly received share of fees which were paid to the said other medical practitioners for their perfonnning ultrasound tests at the applicant's premises.

5. That the applicant has been guilty of misconduct in a professional respect in that between approximately October 1983 and August 1984 he made claims for and received monies from the Health Insurance Commission in respect to laser-beam treatment predominantly provided to patients by a non-medically qualified person employed by or under his control when he represented to the Commission that the said services were rendered by the applicant.

6. That the applicant has been guilty of misconduct in a professional respect in that between approximately October 1983 and August 1984 he being a registered medical practitioner, employed in connection with his profession practice conducted at Georges Hall in the State of New South Wales an assistant, namely Barbara Lorna El-Gamal, who was not a registered medical practitioner, and permitted the said person to perform operations known as laser surgery upon his patients which operations required professional discretion or skill.

7. That the applicant has been guilty of misconduct in a professional respect that between approximately October 1983 and August 1984 he, being a registered medical practitioner, by his advice, assistance acid co-operation, knowingly enabled a person, namely Barbara Lorna El-Gamal, who was not a registered practitioner, to perform an act of operative as distinct from manipulative surgery, namely laser surgery, upon his patients which operations required professional discretion or skill.

An appeal to the Court of Appeal was dismissed. On 29 November 1988 the Medical Tribunal delivered its decision with respect to penalty. There were a number of penalties but the most significant one was in respect to complaint one where, as noted earlier, the applicant's name was removed from the Register with ten years being set before he could re-apply. That ten years expired on 6 December 1998.

It is appropriate to record here the applicable legal principles concerning reformation of character, and the onus and standard of proof, before discussing the evidence and findings of the Tribunal.

The Applicable Legal Tests

In deciding whether the applicant has overcome his defect of character and rehabilitated himself the Tribunal is guided by the statement of Justice Walsh in *Ex-parte Tziniolis*[3]*:*

> *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*

[3](1966) 84 WN9 (Part 2) 175 at 286.

> *years later he has established himself as a different man. The position is somewhat similar to that which exists when application is made by a barrister or a solicitor who has been found guilty of serious misconduct exhibiting a lack of proper standards, seeking reinstatement on the ground that, after a lapse of time, he has become a fit proper person to be a member of profession which requires qualities an standards in which he is known to be deficient. In such cases it has been frequently said that a heavy onus lies on the applicant - see Ex parte Clyne [1962]SR NSW 436 at 441 and cases there cited.*

Further the Tribunal has considered the judgment of Justice Mahoney in *Bannister v Walton*[4]. That was an application for a stay. His Honour said at 12:

> *The right to practise [medicine] affords to a practitioner privileges and opportunities which are not available to others. He is expected to maintain a relationship with patients who are affected his character. The relationship is one which touches matters such as trust, confidence, confidentiality and right conduct, Clinical capacity is by no means the only consideration to which regard is to be had in determining whether a person is appropriate to practise medicine. It is necessary that the public be protected against those who, though having the appropriate skills do not have the character for the opportunities and privileges which the right to practise gives.*

The purpose of the jurisdiction exercised by the Tribunal is not the punishment, or further punishment, of the former practitioner. The Tribunal's jurisdiction is the protection of the public. *Dawson v Law Society of NSW*[5] and *Health Care Complaints Commission v Litchfield*[6].

The standard of proof is that referred to in *Rejfek v McElroy*[7] as applied in *Bannister v Wation*[8]. In that latter case it was held that the requirement is that the Tribunal be "comfortably satisfied on the balance of probabilities"

[4] 30 April 1992 unreported
[5] Court of Appeal 21 December 1989 per Kirby P at 9
[6] (1997) 41NSWLR 630 at 637.
[7] (1965)112 CLR 517 at 521
[8] (1993) 30 NSWLR 699

As this is an application to review an order that his name be removed from the Register the onus is on the applicant satisfy the Tribunal that he is now a fit and proper person to be registered. Thus as was said by the Tribunal in *Prakash*[9],

> *The onus is on the Applicant to satisfy the Tribunal on, the balance of probabilities that he is now a fit and proper person to be registered. This onus requires him to prove that he is of good character and that he has overcome the defect in his character as shown by his previous dishonest and fraudulent conduct. It is a heavy onus as it is not easy of proof and one cannot rely merely on the effluxion of time.*

That case also notes the principle that in assessing the applicant's worthiness and reliability for the future, it looks at the subjective evidence and beyond it other evidence of integrity and reliability.

In a similar vein is the statement in *Shariff,*[10]

> *The principal issue to be determined by this Tribunal is whether the Applicant has proved that he is now of that good character which, befits a person to practice medicine. The onus lies on him to establish that he now bears such good character. As a person whose name has been removed from the Register he has to accept that it has been found that he was guilty of conduct which showed a defect of character incompatible with membership of a self-respecting profession. It is necessary for the Applicant to satisfy this Tribunal that the defect which led to the conduct requiring such adverse finding has been overcome. Clear proof is required to satisfy the onus which lies on the applicant, one cannot rely merely on the effluxion of time.*

Again, in the *Tzinolis* appeal[11] Justice Walsh stated:

Each case must depend on its own facts and circumstances. But it necessary to say that, in forming a judgement on the applicant's character at the present time, and in evaluating how far the weight of earlier incidents should be

[9] 31 July 1992
[10] Medical Tribunal, 2 October 1990
[11] At 461.7

lessened by an intervening period without any known blemish, I think it is of great importance that the applicant has at this time given false evidence relation to some of the matters on which he was questioned. This appears to me to lessen greatly the weight of the argument that the specific allegations against him relate to a somewhat distant period and are not really of much importance in determining what his character is now.

See also *Medical Practitioners Board of Victoria v McGoldrick* [12] and *Wanigaratne v Health Care Complaints Commission*[13]

Acceptance of genuine repentance assists a Tribunal in reaching a conclusion that the applicant has adopted appropriate values and standards. Failure to prove genuine contrition acts adversely to an applicant's case. The issue is the applicant's character, an element in deciding whether he can be entrusted with the practise of medicine.

Background

The applicant's educational and working life to 1984, when he committed serious criminal offences.

The applicant told the Tribunal that he was born in Canton, Victoria on 2 1943. He completed his secondary education in 1960. Awarded a Commonwealth Scholarship, he entered Melbourne University in 1961 graduating in 1966, Bachelor of Medicine, Bachelor of Surgery, with honours in medicine. He was awarded the Exhibition for topping the year in anatomy, histology and embryology. In 1966, just prior to the final examinations, successfully completed the examination for the Educational Council for Foreign Medical Graduates necessary to practise in the United States.

[12] (1999) VSCA 215 at para 28.

[13] (2000) NSWCA 204 at para 6.2.

In vacations during the course of his medical degree the applicant assisted various emergency departments in country Victoria.

During his final year at medical school the applicant became aware that there, was a need to provide relief for doctors to undertake an out-of-hours service. He set up the first, he believes, deputising service rostering doctors from a public hospital to visit patients at home. The following year he assisted some colleagues in doing the same thing in Sydney.

In 1967 he was a resident medical officer at Royal Melbourne Hospital and thereafter decided to enter general practice and provide locum services to country practitioners.

The following year the applicant went to Wauchope on the mid North Coast of New South Wales and did a locum there and then at Port Macquarie. The Wauchope community had a very large aboriginal constituency who could not afford medical care. The applicant provided care at no cost.

The applicant then worked in Western Queensland, as a medical Superintendent at a small hospital. He undertook some private practice as well but most of the work was at the hospital.

At this time the applicant obtained a private pilot's licence to enable him to attend more remote communities. He told the Tribunal the experience as a country doctor, particularly in the outback, was unique.

There were neighbouring practitioners about eighty kilometres away and some support from a flying surgeon based in Rockhampton. Consequently, the applicant attended to many emergencies.

In 1969 the applicant purchased a small private practice at Walgett in north western New South Wales some forty kilometres away from Lightning Ridge. He flew there daily to attend his patients as well as some at other neighbouring communities. The applicant told the Tribunal that the experience was extraordinarily good. He had the opportunity to assist patients who were seriously ill to go to larger centres such as Dubbo and he flew them in his own plane. Again, there was a large aboriginal community who were not able to afford to pay for their medical care so that was provided free of charge.

In 1969 the applicant visited Sydney and decided to set up a medical practice with a colleague at Coogee. Over the next few months he spent more and more time at Coogee rather than at Walgett and found an assistant doctor who would work for him there. He and his colleague then expanded to. Liverpool. The applicant began to spend less time in Walgett.

In 1969 he and his partner learnt that in the United States new equipment could process a large number of pathology specimens very cheaply and very quickly. They set up a private laboratory in Sydney called Preventicare. They were the first to provide automatic equipment and forward the results back to general practitioners and specialists via computerised telecommunications.

The applicant told the Tribunal that as a result of these efforts the govertvment reduced pathology fees because tests could be done far more economically. He believes that his efforts were the impetus for these changes.

During that time the applicant contributed to a number of charities. He donated $100,000 to train young persons in classical singing and music and $60,000 to his former school. The music centre there has been named after him

By 1975 the applicant and his partner had eight medical practices in Sydney. He believes there were six in western Sydney and two in the eastern suburbs. The applicant had an interest in obstetrics. He was appointed an honorary medical officer in obstetrics at Liverpool, Bankstown and Fairfield Hospitals. He was also accredited to private hospitals for general surgery.

The applicant told the Tribunal that at this time he had a frenetic work timetable. He would commence operating at 5.00 am some six days a week until approximately 7.00 am. He would then go to the Hammondville practice and move on to other sites such as Moorebank, Georges Hall; Liverpool, Macquarie Fields, Campbelltown, Ingleburn, and then back to Hammondville. He did that seven days a week up until midnight. He believes that during his time in practice, up until his name was removed from the Register of Medical Practitioners in New South Wales, that he had delivered almost 20,000 babies.

Between 1975 and 1978 the applicant resided in Los Angeles in California. His routine was to return to Australia approximately once a month for four or five days in which time he would consult patients and, in particular, carry out confinements. His work in the USA involved administering three multi-disciplinary medical centres and a pathology laboratory. These were very similar to the original Preventicare.

The applicant told the Tribunal that in 1978 he returned to Australia and resumed full time general practice together with his surgical and obstetric commitments. Through training in the USA, and further training in Sydney, he introduced diagnostic ultrasound. He believes he was the first GP to use this technique which, up until then, had only been used by specialist obstetricians and radiologists. In the United States he took an interest in a new form of health insurance called a health maintenance organisation. He set up one called the Family Health Plan which enabled patients to have private care at less cost than health insurance. Pensioners and health care card holders were cared for at no cost.

During this time he assisted a number of charities in particular the Autistic Children's Association. Most of his donations were anonymous. In February 1984 coincidentally with the commencement of Medicare he started the first multi-disciplinary 24 hour medical centres. These practices were open 24 hours a day, and bulk billed so the patients did not incur any direct cost The venture was a success, the applicant describing the demand as ‘enormous’ Within approximately six weeks of opening the first 24 hour centre the practitioners were seeing 600 patients daily. The applicant was the primary practitioner. He told the Tribunal he was working 24 hours a day.

The applicant together with some colleagues, and some investors, opened up centres in a number of areas in New South Wales, Victoria, Queensland and South Australia. At its peak in about

19·86 these centres numbered about 32. There were approximately 1.5 million patient contacts per annum. Over 400 GPs and about 200 specialists were practising from the centres. The applicant was told by the Health Insurance Commission that he was the busiest doctor in Australia.

In about 1978 the applicant commenced offering patients argon laser treatment for tattoos and port wine stains. He believes that he was the only practitoner in New South Wales, if not Australia, doing tattoo removal with an argon laser. He told the Tribunal that he developed an unusual expertise. Most patents were referred by other practitioners.

There is no doubt the applicant demonstrated a remarkable capacity for work and some very special skills during this period. However, from 1978, the 1988 Medical tribunal found the applicant had been over - servicing patients and involved in other professional misconduct.

The Period 1984 to 1990

The applicant commits the offences of perverting the course of justice and soliciting to assault, he suffers severe health problems, charged criminal offences, a Medical Board deregisters him, bankrupted, a contingency plan, convicted, imprisoned moves to Victoria to recommence practise on release, fails to accept his misconduct, still maintains the injustice of his conviction.

The applicant told the Tribunal that it was in 1984 that the incidents involving Flannery took place. He said a conversation or several conversations on his mobile telephone were illegally intercepted and recorded. In 1986 the applicant was charged with two offences; soliciting to assault; and perverting the course of justice. He told the Tribunal that at the time he was charged the Federal Government decided to change the *Telecommunications Interception Act* to prevent illegally recorded telephone conversations being used in proceedings after the date of the proclamation, He said:

> *At the time I was charged the Federal Government decided to change, the Telecommunications Interception Act to prevent these illegally recorded telephone conversations being used in proceedings after the date of the proclamation and the proclamation was made three days after my committal proceedings had commenced and It was referred to in Federal Parliament as the Edelsten Amendment to the Telecommunications Interception Act."*

In this way he inferred to this Tribunal his belief that the communication was illegally intercepted is a relevant matter in evaluating the underlying conduct the foundation of the convictions.

At this time the applicant developed an unusual complication of glaucoma. He had suffered intermittent glaucoma in both eyes for some years previously and in 1975 had an operation on his right eye to improve drainage. In 1984 started to develop sudden onset of severe pain in his eye.

He found it very difficult to cope and after some weeks a lens. was fatted over the eye to try to prevent the eyelid from rubbing. It was of limited effectiveness and was still extremely painful. One Saturday in Melbourne he had an episode where one of the bullae in his eye ruptured. He told the Tribunal that despite his protests the Registrar at the Eye Hospital used steroid drops in his eye. He developed an infection which became life-threatening.
Transported back to Sydney, Professor Fred Hollows decided to remove his eye. The applicant has been fitted with an ocular prosthesis. It is stable now but becomes uncomfortable during the day.

Shortly after the removal of his eye the applicant was married. About two months later he was awarded the licence to field the Sydney Swans football team in the then Victorian Football League which later became the AFL.

In July 1986, at approximately 5.30 in the morning, and while going to one of his medical centres at Baulkham Hills, the applicant was involved in a motor vehicle accident. His right tibia and fibula were fractured as was his right talus, caleaneum, three metacarpals in his right hand, his left calcaneum. The applicant had sternal and head injuries. He suffered some post-traumatic amnesia. His first recollection after the accident, which occurred on a Thursday, is the following Saturday afternoon.

In 1987 the hearings before the Medical Tribunal commenced in respect of the six complaints detailed in the next section of these reasons. Later that year, after a dispute with the Australian Tax Office, the applicant filed a debtors' petition in bankruptcy which, on application by the ATO, was annulled and a new sequestration order based on a creditors' petition was substituted. He took the ATO to court and was successful. The behaviour of the Tax Office was found to be unconscionable. The applicant told the Tribunal that in relation to the disputed tax matter, the Australian Tax Office issued a Section 218 notice that directed Medicare to pay all the funds that were being paid to the applicant for all the doctors who worked for him, directly to the Tax Office. The applicant told the Tribunal that this action put him out of business overnight "

On 27 April 1988 the Medical Tribunal handed down its decision and found the six complaints

proven.

In his evidence in chief the applicant described the events between March 1998 and his trial. He told the Tribunal that from March of 1988 he was employed by VIP Medical Centres Pty Ltd as a general practitioner. He practised at the same, centres that had been previously owned by him but which had, after his bankruptcy, been purchased by an accountant.

After removal of his name from the Register in December 1998 the applicant moved to Melbourne where he had been registered since he graduated in Melbourne and commenced practise in a suburb in the north o f Melbourne called Kingsbury. He worked there seven days a week, living at the surgery and sleeping on the examination table at night time.

The applicant said that as a result of his efforts, VIP were able to open other suburban centres. He assisted in each of those. He continued to work for VIP Medical Centres between 1988 and 1990 as a GP and then in July 1990 stood trial for the two offences for which he had been charged.

The arrangements the applicant made to practise in Victoria were in the Tribunal's opinion a contingency plan, to meet the reality of deregistration in New South Wales. This was discussed in *Donnelly v Edelsten* [15]. The Federal Court found that by February 1988, when it became apparent to the applicant that his right to practise medicine was in jeopardy, he invited a patient, an accountant, "to become involved in the running of medical centres". A company, referred to as Excellence in the judgement, controlled by the accountant "took over the ownership of the businesses then being conducted by the applicant's wife at a number of medical centres in New South Wales. Excellence did not pay Mrs Edelsten for the businesses but made an `arrangement' with the applicant to engage his services as a medical practitioner". At the applicant's suggestion Excellence established medical centres in Victoria. After the applicant was struck off in New South Wales he moved to Victoria where he provided his services as a medical practitioner and a consultant to Excellence.

In this way the applicant was able to continue to practise in Victoria, following his deregistration in New South Wales, until this criminal trial in July 1990. This Tribunal takes a similar view to the Federal Court. It is also of the opinion that the dealings with Excellence were a determined effort to avoid the effects of the imminent deregistration in NSW.

[15] (1994) 49 FCR 384 at 386 - 7

At his trial he was found guilty of the offences of solicit to assault and conspiracy to pervert the course of justice. He was convicted and the following month sentenced to a total of twelve months imprisonment.

In his Remarks on Sentence Justice Sharpe made findings:

(a) that the applicant urged Flannery to deal harshly with Evans in such a manner that he would not trouble him again; and [16]

(b) that the applicant conspired with certain police officers and Flannery to give Flannery laser treatment in order to keep him out of the way for a few days so that he would not have to appear before a certain judge of the Supreme Court who they believed had a reputation not conducive to Flannery's chance successfully defending his trial.[17]

The Tribunal regards these findings as very serious. The conduct involved knowingly deceiving a court, with respect to a patient, and acting in concert with corrupt police officers. It goes to the very heart of his honesty as a medical practitioner. The findings concerning the conspiracy to pervert the course of justice were not the subject of complaint before the 1988 Tribunal.

The applicant's appeal against conviction to the Court of Criminal Appeal, was dismissed on 3 December 1990: *R -v- Edelsten*[18]. He was released on 3 August 1991 and returned to Melbourne to resume practice.

The' Tribunal has concluded that the conduct of the applicant in practising in Victoria after the very significant findings against him are a strong indication that he did not accept his misconduct at that time. The Tribunal is not distracted from the seriousness of the applicants criminal conduct by taking into

[16] 2.5
[17] 3.1

account his point, made in his evidence in chief, that in his opinion the conversations were illegally intercepted.

The Period - Release from Prison to Deregistration in Victoria

Applicant resists attempts to deregister him in Victoria, continues to practice in Victoria, effects of amendments to the Health Insurance Act, lack of insight continues.

On 12 August 1991, the Medical Practitioners Board of Victoria commenced an inquiry as to whether the NSW convictions were a basis for deregistration in Victoria. The applicant said that he appealed against certain evidentiary rulings to the Supreme Court, but such appeals were dismissed. On 31 August 1992 the Victorian Medical Practitioners Board determined that his name should be removed from the Medical Register in Victoria effective as 4 September 1992.

Again, this is a period when the applicant could not accept his misconduct. He admitted this to the Tribunal saying he was "still in self denial" and considered "they've got it wrong"[19]. His evidence concerning this period is of interest both in understanding the persistence of the applicant's denial in the face of serious findings of fact against him and his present insight into that behaviour. These present perceptions are discussed later in these reasons.

Whilst the applicant was in prison the *Health Insurance A ct was* amended to change the definition of medical practitioner. The effect was to change the way the health system reimbursed medical practitioners. A person deregisteced in one state was not entitled, if registered in another state, to Medicare benefits or to write prescriptions under the Pharmaceutical Benefits Scheme. This imposed a significant restriction on the applicant receiving any income as a medical practitioner.

[18] (1990) 21 NSWLR 542 (Exhibit l, Tab 5)
[19] T71.11

The applicant told the Tribunal that as a result of this all the work that he did over the next sixteen months until December 1992, other than very few Workcover patients, was at no charge to his patients. The applicant continued, between August 1991 and December 1992, to practise as a GP for Perfect Health Medical Centres at Epping, Glenroy, Box Hill and Oakley. He said he would work twenty four hours a day. Again sleeping on an examination table at various surgeries.

The applicant told the Tribunal that from the time he recommenced practising, after being released from gaol, until his deregistration on 9 December 1992 there was no impugned conduct and there were no public interest considerations that he believes were decided against him. He told the Tribunal that there were no complaints from the public to the Board and in fact at the time that the Board in Victoria were making their decision large numbers of the public came to his support.

The Tribunal listened with concern to this evidence concerning the applicant's past serious misconduct.

The Tribunal is of the opinion that the applicant's conduct in resisting deregistration in Victoria upon conviction of such serious offences in New South Wales shows deficiencies both in conduct and attitude. He continued to lack insight into his misconduct.

The Period 1992 2000

The applicant's challenges to the decision of the Victorian Medical Practitioners Board, further health problems, a vigorous course of study, seeks admission as a legal practitioner, holds himself out as a medical practitioner, Part X arrangement, tailoring disclosure of his assets and liabtlities, disguising his assets and liabilities, recent commercial dealings, the applicant's life style.

<u>The Challenges</u>

When the applicant was finally deregistered in Victoria in December 1992, after an unsuccessful appeal to the Victorian Supreme Court against the decision of the

Victorian Medical Board, he applied for reregistration the following day.

At this stage the applicant did not accept his unprofessional and criminal conduct. He lacked insight into his position.

Further, his present explanation for reapplying immediately for reregistration, in the face of the outcome of the appeal, and the serious findings of fact against him, lacks credibility. He was asked about this in cross examination

> Q. You applied to be re-registered the next day, didn't you?
> A. I did and if I might explain why, though?
>
> Q. If you would?
> A. During the course of the proceedings before the Supreme Court, I'm not sure if it was Smith J or Hayne J, he indicated that it was appropriate to apply for re-registration immediately after the order became effective.
>
> Q. Appropriate?
> A. Yes, in the circumstances that he was considering events of conviction of an indictable offence from a period well before. There was no impugned conduct up until the date of the hearing before the Medical Board and that court, so he thought that I could apply and then it would be up to the board to consider these matters anew.
>
> *Q. Yes , what his Honour was saying to you was that it was possible that you could apply. There was no bar to your applying ?*
> *A. That is correct, although I don't remember his exact words but I know I was encouraged by legal advisers to make the application immediately*[20].

It must have been obvious to the applicant then and now that he was not being encouraged to seek reregistration immediately but being informed of the effect of the orders. When the fact of reregistration as a possibility only was put to him he then shifted to the argument that he acting on the advise of others. This is an instance of a pattern in the applicant's conduct of deflecting responsibility upon others for his actions.

[20] T 71-72

> The applicant's appeal to the New South Wales Court of Appeal against the orders of the Medical Tribunal of 29 November 1988 was dismissed on 23 June 1994. The judgement of each of the judges of the Court should have sent a clear message to the applicant that his conduct was sufficiently reprehensible to justify the orders made The applicant did not gain this insight.

In July, 1994, the applicant was notified that the Victorian Medical Practitioners Board had refused his 1992 application for reregistration.

On 20 July 1995 the Medical Practitioners Board of Victoria (the successor to the Medical Board of Victoria) decided not to grant the applicant registration. In its reasons that Board found that the applicant had shown no remorse in his actions, in his statements or demeanour. The Board stated:

> This is because he has consistently stated that he is innocent of all the various complaints and charges that were brought before both the Medical Tribunal of New South Wales and the New South Wales Supreme Court [21].

The Board also noted that it was not satisfied that the applicant has not a propensity to re-offend in future areas, such as over servicing and illicit medical practice, which were the subject of the 1988 complaints.

In February 1998 the applicant made a further application to the Victorian Medical Practitioners' Board to be registered as a medical practitioner. This was refused on 1 October 1998. On 2 October 1998 he applied to the Victorian Civil and Administrative Tribunal, pursuant to Section 60 of the Medical Practice Act in Victoria. The hearing on this matter took place in early February 1999. On 18 February his application was rejected by the VCAT.

The applicant told the Tribunal that during this hearing before VCAT he was asked for a version of the events that took place in 1984. He said:

[21] Reasons for Determination at 9

Although I stated I could not recall these events I gave a version that I had given in the past many times and I stated that I did try to down play my involvement in these matters. I was wrong. I should not have done so.[22]

The applicant then sought leave to appeal to the Court of Appeal in Victoria on 9 April 1999. The Court of Appeal dismissed this application.

During the period 1998 through to Scptember 1999, via a corporate entity of which he was a director, he provided some consulting services on an ad hoc basis to a number of companies involved in mergers and acquisitions of medical centres. He said he was, however, assisted financially by the largesse of family and friends.

On the 4 of May 1999, the applicant made a further application in Victoria. The Medical Practitioner's Board on the 2 of September, 1999, refused this application. He then applied on the 27 of September 1999 to VCAT for review of the Board's decision.

On the 4 August 1999, with the leave of the New South Wales Medical Tribunal, the applicant discontinued an application for reregistration. This was based on legal advice that he should finalise his proceedings in Victoria before proceeding in New South Wales.

The application to the VCAT for review of this fourth application was heard on 14 April last year and dismissed on the 19 July 2000.

The 2000 VCAT decision was the subject of an appeal to the Supreme Court of Victoria. On 1 September 2000 Master Wheeler granted leave to the applicant to appeal from the 2000 VCAT decision. The matter was heard by his Honour Justice Nathan from 8 to 12 December 2000 inclusive. The applicant appeared in person. His Honour handed down an extempore judgment on the last day of the hearing ordering that the appeal be allowed and that the order of the VCAT affirming the decision of the Medical Practitioners' Board of Victoria of 2 September 1999 dismissing the application for review, be set aside.

[22] T16.3

His Honour also ordered that the proceedings be remitted to VCAT for re-hearing on the issue of the condition and remorse with respect to all of the applicant's conduct as a medical practitioner from 1978 to 1991 and as an applicant before the New South Wales Medical Tribunal, the Medical Practitioners' Board of Victoria, Victorian Civil Administrative Tribunal together with the Court of Appeal of the Supreme Court of Victoria. That VCAT hearing was conducted by the original members and was heard on he 21 February this year. The applicant told this Tribunal that at the hearing:

> *I admitted my wrong doing in respect to all the impugned conduct in the past and expressed contrition and remorse. I stated to the VCAT the fact that I was grovelling and in fact I intend doing that before this Tribunal today because this matter is of such importance to me.*[23]
>
> This Tribunal was informed during the course of the hearing that the VCAT has refused the application.

Continuing Health Problems

In December 1992, not long after his name was removed from the register in Victoria, the applicant had a sudden onset of chest pain. He went to a hospital and was diagnosed with a probable infarct. He had angiogram which showed his left anterior descending coronary artery was occluded. He underwent coronary artery bypass graft surgery. The applicant told the Tribunal that after three months he had recovered fully and resumed working as an administrator with Perfect Health Medical Centres, the company that he had worked for as a GP.

In late 1991 the applicant consulted Dr Eric Davis, a neurologist in Sydney, in preparation for his claim against the GIO in respect to the motor vehicle accident. When he saw Dr Davis, the applicant complained of memory loss, a word-finding difficulty and intense deja vu effects which he had noticed for a considerable time and which were becoming more intrusive.

[23] TI8.9

The applicant underwent a magnetic resonance imaging scan at Royal North Shore Medical Centre which revealed a large intracranial tumour within the cavernous sinus.

The tumour was approximately five by three centimetres. The applicant was told that some of the best experts in the world were in the United States. He travelled there and saw Professor Doline, regarded as one of the foremost experts in the removal of these sorts of tumours. He was advised to have the tumour monitored. The cost of removing it was prohibitive.

The applicant gave evidence that after seeing Dr Davis he consulted Dr. Moraury, a neurologist at thc Heidelberg Repatriation Hospital in Melbourne. Dr Barnes, a Melbourne neuro-psychiatrist, Professor Mullen, A Professor of Forensic Psychiatry at Monash and the Victorian Forensic Medicine Institute, Professor Ball a forensic psychiatrist and Dr Simon Crowe a neuro-psychologist. He also saw a Mr Joblin, a forensic psychologist. These consultations took place between July and September 1994.

As a result of the reports, the applicant told the Tribunal that:

I believe that my hypomanic behaviour and some of my impugned conduct in the past may have been caused by the tumour. On the basis of this, it was submitted by my legal advisers to the medical board, that some of my errant behaviour in the past may have been contributed to by this tumour.[24]

In his submissions to the Tribunal the applicant states that he does not rely on the medical evidence of Professors Mullcn and Ball as excuses for his impugned / criminal conduct. He only relies upon that medical evidence that

[24] T14.17

the brain tumour may be a possible reason for memory loss and / or the removal thereof a possible reason for a change in his demeanour.

That admission was recorded on the transcript as:

The applicant does not contend that there is causal link between the brain tumour and his criminal and professional misconduct between 1978 and I984. The applicant had a brain tumour removed in 1995. The consulting specialists that examined him before and after removal of the tumour noted significantly improved changes to his demeanour after its removal[25].

In 1995 an opportunity arose for Professor Doline to perform surgery on the applicant's tumour in Melbourne. This cost approximately $50,000 which the applicant borrowed from family and friends.

The applicant had a fairly delayed and complicated recovery. He was left with an anaesthetic cornea in his good eye which caused blurred vision. He had changes to the nerves that had both been severed. Later they were re-anastomosed differently. When the applicant touches his lip he experiences pain above the eye. He has been left with atrophy on the left side of his face which causes a mild disfigurement.

Further studies

In 1993, not long after his de-registration, the applicant determined to keep himself current and undertook at Monash University, the Australian Certificate of Civil Aviation Medicine. He then enrolled at Southern Cross University in New South Wales for an MBA, University of Wollongong for a Master of Science and Charles Stuart University in New South Wales for a Master of Health Services Management.

[25] T316.20

In 1996 he was awarded his graduate Bachelor of Laws, Master of Science, Master of Health Services Management and Pacific Western University in California Doctor of Philosophy.

The Tribunal is of opinion that these activities demonstrate that at that time the applicant was a person of high intellectual capacity and excellent memory. Professor Leon Piterman the head of the Department of Community and General Practice at Monash University wrote a reference in late 1988 describing the applicant as demonstrating a wide breadth and depth of knowledge in the subjects he was studying for the Graduate Diploma in Family Medicine in 1995. He wrote that "Despite his long absence from clinical practice his performance during the course reflected an excellent retentive memory, as well as a desire to keep up to date with contemporary knowledge[26]".

Between 1992 and 1997, in between his studies, the applicant provided consulting services to Perfect Health in administering its medical centres.

The applicant told the Tribunal that in 1997 he was appointed Professor of Health Care Administration, adjunct faculty, at that Pacific Western University California. For approximately the next 18 months he said he supervised a number of students in Australia doing various degrees at the University.

The applicant also completed a course at the Leo Cussen Institute and applied for adrnission as a barrister and solicitor. After what he believes was the second hearing of that matter he was advised not to proceed until his application for reregistration as a medical practitioner both in New South Wales and Victoria had been determined.

[26] Exhibit C

in 1999 the applicant enrolled at Monash University for both a Master of Laws and Master of Family Medicine and was awarded those degrees at the end of that year.

The Application for Admission as a Legal Practitioner

On the 5 September 1997, the applicant swore an affidavit in support of a proposed application to the Supreme Court of Victoria for admission to practice as a barrister and a solicitor. The affidavit makes it clear that the applicant relies on excuses that exculpate him from criminal responsibility that led to his convictions. He deposes that he intends to petition the Governor of New South Wales to have his convictions quashed. He refers to fresh evidence and stated that in the opinion of Profcssor Mullen, Professor of Forensic Psychiatry at Monash University, the convictions that were central to that conviction might well have been caused by his brain tumour which was diagnosed in 1990.

In the Tribunal's view the impression that the applicant was seeking to create was that there were significant doubts about the adverse findings of the 1988 Medical Tribunal. The applicant did not accept that he was trying to create that impression when it was suggested by the respondent's counsel. He was prepared to concede that that those considerations might assist him to argue in the Victorian Supreme Court that he was a fit and proper person to be registered as a legal practitioner in Victoria.

When these matters were put to him in cross examination he said:

I'm astonished. I look at it now and I don't recall any of that.[27]

[27] T230.8

The Tribunal is satisfied that the affidavit was exculpatory of the applicant's conduct. At the time he swore it he did not accept his personal responsibility for his criminal acts. At that point the brain tumour was of historical interest and no more. The affidavit by its terms sought to communicate to those giving consideration to his application that that the 1988 Tribunal decision was under serious challenge. This was not the case. Given the applicant's extensive preparation for this case it is not credible that he should be so surprised when these matters were raised in cross examination.

In his affidavit the applicant listed a number of traffic matters and deposed that all, fines had been paid, meaning thereby traffic fines. The fine imposed by the Medical Tribunal was referred to by the respondent's counsel in "cross examination[28].

I mean I understand where you're coming from in relation to on page 3, complaint (d), the fine of $10,000. I did answer that several days ago that bankruptcy occurred. I believe that in law that fine was covered by bankruptcy and was paid out of the estate or settled by the sequestration of my estate.

Q. Where did you get that idea?
A. From legal advice from my studies.

Q. It's a fine, a penalty?
A. I understood that that was the case.

The Tribunal does not regard this evidence as credible. The applicant has demonstrated that he is an astute person. It is not credible that he would expect the fine to have been subsumed by his bankruptcy. He is able to give, without reference to documents, the history of his assets liabilities over an extended

[28]Exhibit 19 p3, T232-4

period of time. The answer was evasive. The tribunal draws the inference that the applicant simply avoided disclosure of the fact the fine remained unpaid.

This view is reinforced by a comparison with the applicants earlier evidence about the fine imposed by the 1988 Medical Tribunal. He was asked about his evidence, which is recorded at page 55 of the transcript:

Q. Have you checked to see whether you paid the fine?
A. No.

Q.: What's your best belief in respect to that fine?
A. I really don't know.

Q. What inquiries would you need to make yourself to see whether you'd paid that fine? I.
A. I've got no idea. The events that overtook me at that time were profound I've got no idea even where to start.

Q. So at this stage you can't say one way or the other whether you paid that fine?
A. No, I can't.

Then at pages 232 - 234 he was asked,

Q. Now, you raised with me that you'd given some evidence the other day and that's what you said wasn't it?
A. If you've read from the transcript, yes.

Q. Well, you haven't even bothered to check if you've paid the fine have you?
A. I haven't, no.

The applicant's evidence was inconsistent on this point and demonstrates the evasive way he approached, in his evidence before this Tribunal, the issue of

payment of the fine imposed by the Medical Tribunal.

The Applicant Holding Himself Out as a Medical Practitioner

The Tribunal has reached the conclusion that from time to time, and to suit his purpose, the applicant has described himself as a medical practitioner and held himself out to be a medical practitioner since deregistration. In reaching this conclusion it relies on the following material.

In January 1995, on returning from the United States of America, the applicant described his usual occupation as medical practitioner on the return card. Asked about this in cross examination he said that he had been a medical practitioner for thirty years although he was not so at the time. On departure cards he described himself as an administrator or company director. Again, In January 1996 he described himself as a medical practitioner on returning to Australia. The applicant said:

I think when it said your "usual" occupation, I assessed that I had done that for most of my professional life or my working life. It wasn't meant to mean anything that I was actually practising.[29]

The Tribunal considers that it is not a credible explanation for a deregistered medical practitioner, with some years to run before being able to apply for registration, to give for mis-describing himself, as a medical practitioner. The Tribunal is concerned that the applicant gave such evidence during the hearing.

Importantly in the Tribunal's view the applicant has also created, or attempted to create, the impression with the Western Pacific University that he was a registered medical practitioner.

[29] T124.54

Again the Tribunal is concerned as to the answers given by the applicant in evidence. In response to a request for information from the HCCC the Vice President of the University in May 1999 replied that the applicant did not disclose that he had been deregistered. The only evidence to the contrary is the, applicant's evidence that he told a person in authority that fact in a conference. The Tribunal is of opinion that it is inherently unlikely that a University appoint a deregistered doctor to its adjunct faculty to act as a student co-ordinator. It simply would not be good business. This would be especially so if it were aware of the findings against him.

The applicant's resume, forwarded in December 1993, expressing interest in degree courses at the university is of particular concern. It is stated to be from “Dr GW Edelsten" and is signed by the applicant as "Dr GW Edelsten”. This was untrue. Further, in his brief resume in the letter the applicant says, in relation to the period, "1972 until present"... " Private Medical practice and principal of numerous multi disciplinary medical centres in New South Wales, Victoria and Queensland (Australia)". The Tribunal regards the letter as being, obviously misleading. The applicant failed to provide any credible explanation for this conduct in his evidence. He said:

Q. But you weren't in private medical practice between December 1992, and , December 1993, were you, when you sent this resume to the University?
A. Something passes me, because I'm not sure you are objecting to the way it’s written.

Q. Well because it's not accurate, I suggest to you?
A. I think I’ve explained it and I'll try again: It says, 1972 and present, private medical practice and principal of numerous multi disciplinary medical centres. I think you're probably correct. It should have said, private medical practice ceased in 1992 but it was shorthand. It wasn't meant to be anything more than giving an idea and certainly the extra year was insignificant in the period

Q. It was misleading, wasn't it?

A. No[30].

The Tribunal does not accept .this evidence. It reflects adversely on his character.

The Decd of Assignment

In September 1998 the applicant entered into a deed of assignment under part X of the *Bankruptcy Act.*

The applicant estimates his assets to suit the purpose of disclosure

The Tribunal has concluded that the applicant tailors estimates of his assets to suit the purpose of disclosure. Where it was in his interest to minimise his assets when seeking a release from a taxation liability he disclosed, as contingent assets, the sum of $141,000 as prospective damages in three defamation actions. Four months later in his Statement of Affairs he estimated the same actions as an asset of $900,000. The Tribunal is unpersuaded by the applicant's assertion that, as no litigation was commenced, the figures were necessarily uncertain. His explanation concerning the amounts shown in the Statement of Affairs lacks credibility. By his conduct over time and in the witness box the applicant demonstrated an eye for detail and precision. It is not credible that the possible defamation awards were described in this way. The applicant sought to mislead both the taxation office and his creditors concerning the nature and extent of his assets. This reflects adversely both on his character and his reliability as a witness.

It also suited the applicant that his creditors should believe that he was attempting to have his convictions overturned and that such a process was

[30] T299.49

underway. He was present at the September 1998 meeting of his creditors when his trustee, Mr Goodin, addressed the creditors. The applicant was present. Mr Goodin made clear his intention not to mislead creditors. He said[31] that the applicant was “currently working to complete further studies in a medical and also a legal degree". He corrected this to a "Master of Law and a Master of Family Medicine". That is a minor matter compared to his statement a few moments later that "He is in the process of attempting to overturn the criminal convictions, which is going nowhere in particular, as well as seeking registration as a solicitor so she can practise in the area of law. Again, that so far has be unsuccessful". The applicant said nothing to correct Mr Goodin at the meeting. Again this passage in his evidence reflects adversely on the applicant's character and reliability as a witness.

The Applicant Disguising his Assets and Liabilities

The Tribunal is satisfied that the applicant has from time to time tried to mislead others as to the true nature of his personal and business affairs. He was not frank with the Tribunal concerning the ownership of the Quamby Lodge property. For undisclosed purposes the property was beneficially owned by a Mr Brown. This transaction is apparently the only one between the applicant and Mr Brown. The applicant was only introduced to him for the purposes of the transaction. He did not know him before hand. Mr Biown was paid a fee.

The applicant represented to GE Finance that he owned the home. In fact a company described in evidence as Quamby Lodge purchased the property in November 1997. When asked how he came to assert in a finance application that he was the owner of the property when he was not a shareholder or director of that company he said that the shares were owned benericially for him by Mr Brown. The applicant agreed it was a complicated way to do business. He could not remember the purpose of the device but, consistently with his other

[31] Exhibit 14 at 24.6

evidence discussed above, distanced himself from the decision, saying it was on advice.

The Tribunal does not accept that the applicant cannot bring to mind the purpose of the device.

The applicant justified the statement in the application for finance that he owned Quamby lodge on the basis he was the beneficial owner. However, in the context of seeking a discretionary release of his taxation liability at that time he did not disclose these arrangements. He created the impression to the Designated Person from the Administrative Appeals Tribunal, Ms Cooper, who conducted an examination of the applicant for consideration by the Taxation Relief Board32 that he was impecunious and renting the property [33].

She recorded the applicant's sworn testimony of 29 May 1998 as, [34]

In answer to questions by the officers from the Department, Mr Edelsten stated that he was the sole director and probably the sold shareholder in Medical Legal Management Services, the company from which he receives his annual director's fees of $1200. This company has been doing a little consulting, but has little income and its liabilities well exceed its assets. Mr Edelsten was asked to explain some press reports, which indicated that he was selling a property Quamby Lodge. He said that he had rented the property but was not its owner, although he had agreed to the agent using his name, in an attempt to gain free publicity for the sale. If the property had sold for over $1,000,000, he was to be paid a fee, however this did not occur.

The applicant's explanation for the apparent inconsistency is that the contract entered into by Mr Brown was rescinded because the purchaser failed to complete the purchase. The owner rented the property to the applicant who lent his name to the promotion of the property for sale. Ms Cooper had a small part of the picture.

[32] Exhibit 22

[33] T205

[34] T270

This suited his purpose in May 1998. The arrangements with respect to Quamby lodge appear unnecessarily complicated. The Tribunal is satisfied the applicant was motivated to disguise the true nature of his business affairs at that time to Ms Cooper and to this Tribunal. The Tribunal is also satisfied that the applicant has not been full and frank with the Tribunal concerning his financial and personal affairs between 1993 and the present.

Recent Commercial Dealings

Late in 1999 Medical and Legal Management Services, were engaged by a group of doctors and business people to establish whether a cardio-vascular risk assessment clinic using a new technology called ultra-fast CT scanning could be established in Melbourne There was a similar, service being operated by a Dr Walker in Sydney who had the first of these ultra-fast CT machines. The applicant gave evidence that as a result of the research and the protocols that he set up a company called Cardio Life Pty Ltd was established in Melbourne to provide this service.

In September 2000 that company, controlled by the applicant, was doing some research on DNA paternity testing in Australia. As a result of that a company called Gene - e Pty Ltd was established by some associates of his. The applicant provided some ad hoc consulting services to it. In November 2000, an investigation was made as whether there were any gaps in the Melbourne metropolitan area where medical services were not adequately provided . A company called Millennium Medical Centres was established, and again the applicant provided some ad toe consulting services.

The Tribunal has some concerns over the applicant's association with Gene - e Pty Ltd. He initiated the enterprise and has been publicly associated with it. That company carries out paternity testing. The applicant showed no developed understanding of the ethical issues this new technique generates. For example, in the terms and conditions of the contract[35] the customer simply warrants that he/she is entitled to possession of the samples and advises that the customer should obtain independent legal advice about a legal entitlement to take or obtain samples of biological material from other persons. This of course includes infants. The Tribunal regards these as flimsy controls in managing such a sensitive process.

[35] Exhibit D .

The applicant did not show insight into these matters. He did not give the Tribunal confidence that he can distance himself from the entrepreneurial without professional compromise.

The Applicant's Life Style

The applicant has maintained a lifestyle very out of step with his stated impecuniosity. The Quamby property appeared well outside his means to occupy, even with some space being given over for office use. During the creditor's meeting of 28 September 1998 the representative of the Australian Tax Office made the astute comment.

All along there seems to be expenditure more than income. You must be having access to funds from somewhere?[36]

The applicant told the Tribunal that he has been supported by friends and family for long periods of time. Considerable sums have been expended on his behalf for legal expenses, a motor vehicle and travel overseas The Tribunal is not persuaded the applicant has been frank with it concerning his business relationships. It is inherently unlikely that such support, outside his immediate family, has been forthcoming without undisclosed complementary services been provided by the applicant or promised by him.

The applicant's failure to pay or address his obligation to pay outstanding costs orders (made in 1988,1994 aid 1999) also generates a lack of confidence in the Tribunal that he would be compliant with conditions imposed on any registration order. He was well aware these matters would be raised during the hearing but took no reasonable steps to inform himself of the position.

[36] Exhibit 14 at 49

The Character Evidence

What the referees have said in the many documents forming part of the applicant's case are given weight by the Tribunal. The respondent did not require these people to attend for cross examination. They provide evidence as to the applicant's reputation. The references do not address the applicant's contrition and remorse. This matter was given great emphasis, and properly so by the applicant in the present case. The references are generally undated and appeared to have been prepared for earlier proceedings where the applicant's case was less focussed on the contrition and remorse aspects. The issue before the Tribunal is the applicant's character, assessment of which is made not just through the opinion which the references provide. The Tribunal has to make its own findings as to whether or not the applicant is now a person of good character and has rehabilitated himself. In doing so it has looked for objective proof of change in accordance with the principles explained in *Ex Parte Evatt*[37]. It also looks to its own evaluation of the credibility of the applicant who gave extensive evidence before the Tribunal. See *Law Society of New South Wales Foreman*[38].

The Applicant's Recall of Events and his Remorse and Contrition

The Tribunal has concluded that in the early 1990's the applicant's conduct in conducting commercial transactions as described in *Donnelly v Edelsten,* and appearing to represent himself in complex legal proceeding, are objective evidence that at that stage his health was no bar to his rehabilitation.

In his evidence before the Tribunal the applicant was articulate and demonstrated an excellent grasp of events in his life dating back to his childhood. He was able to address complex questions surrounding his business affairs over a long period. He impressed as having a good memory of events and an ability, at the present time, to recall such events. The Tribunal has already expressed its reservations concerning the applicant's reliability as a witness. It is inherently unlikely that the applicant has no memory of the events surrounding his dealings with Flannery who was a paid killer and hit man. It is not credible that he cannot bring to mind the telephone conversations he had with Ms Bissaker and Ms Nesbitt. They have had a profound infuence on his life. The Tribunal is not persuaded by the argument that the applicants repeated reading of other people's observations and memories coupled with the effects of his tumour upon him have left him with the defecit he asscrts. A deficit so specific that it relates to events of great significance in his life. Further, the applicant did not give the impression at all that he would be led into giving answers he did before the VCAT because his counsel influenced him. Where he gave that evidence the Tribunal does not accept it.

[37] (1969) 71 $R 153 at 160 E

[38] (1994) 34 NSWLR 408 at 448 per Mahoney JA

Consistently with this Tribunal's assessment of the applicant are the views expressed by the 1998 Board which concluded that the applicant has *a strong tendency to adapt his account to his immediace needs*[39]. This view was also expressed by the 1988 Tribunal.

In May 1998 the applicant saw Dr Buchanan, a psychiatrist, at the request of the Victorian Medical Board. Dr Buchanan records that the applicant expressed remorse concerning events to do with his criminal conviction. The report [40] states that:

He is remorseful about ringing Flannery to ask who might be attempting to kill him, and using certain terminology in a joking fashion - eg when told by Flannery that it was $10,000 to bash a person, that "baseball bats are expensive.

The passage does not accurately describe the applicant's criminal conduct and is to a degree exculpatory. It is further indication of the applicant's lack of contrition at May 1998. Given the opportunity in cross examination to explain the doctor's note the applicant was unconvincing. He simply debated the point indicating that the note should be read with an emphasis on the statement that he was remorseful. [41]

The psychiatrist Dr Ball [42] also records that[43] "He told me in some detail about the Flannery matter, insisting on his own innocence".

At the end of his evidence in chief the applicant stated to the Tribunal:
I again today express my contrition and remorse in respect to all my impugned conduct in the past including the matters decided by this Tribunal in 1988, my evidence before that Tribunal which was not accepted, all of my conduct that resulted in the criminal convictions and my conduct before the Medical Board and various VCAT Tribunals. I admit my wrongdoing.

[39] P 6.40
[40] Exhibit 15.4
[41] T227
[42] Exhibit 15, report 8 April 1998
[43] P8

I would say however that I'm now a different person. Perhaps the removal of the tumour has contributed towards these changes as there are many witness statements before this Tribunal that say I am a totally different person today than the person I was in the 1980s. Perhaps it's just wisdom with age.

I would say to this Tribunal there is absolutely no risk of re-offending. These events have to put in colloquial terms screwed up my life completely and not just my life, all of those that I hold dearly. It wrecked my marriage. It's caused, my current impecunious state. I can't tell you of the harm that I've caused to my family. It's a stress of me - I go home and my mother cries all the time. The only way that I can heal the harm that I have caused to the people who I hold dearly is for me to be, re-registered and I desperately want to practice again. I think there is evidence before this Tribunal that I was a caring, competent doctor, certainly patients and my colleagues have attested to this and I would like the opportunity of doing this again.

I've made a lot of mistakes in the past, I admit to them, I was foolish. Foolish pride prevented me up until several years ago to admit this wrongdoing. I couldn't get myself to do it, stupidity, I do that today. I'm not robust in health, I currently suffer from hypertension, hyperlipidemia, coronary artery disease, diabetes and osteoarthritis in my legs, my eye problem, etcetera.

So although my health is stable it is fragile and if I am successful with this application I don't look forward to a long period in practice but I certainly would like to contribute to the community. [44]

The Tribunal is not persuaded that the applicant is "a changed man". The evidence discloses that there is a pattern of behaviour in the applicant which

[44] T18.30

has been consistent from the time of his registration in Victoria right through to and since deregistration .

Findings

The Tribunal on the balance of probabilities is comfortably satisfied as to the following matters:

1. that the applicant has not overcome the defect of character which 1ed to the conduct requiring his removal from the register; and

2. that the applicant has not rehabilitated himself to such an extent that he is now a person of good character for the purpose of practising medicine.

Costs

There is no reason advanced as to why costs should not follow the event.

Further Application

The Tribunal has considered whether an order should be made under 63 (5) of the Act specifying a time before the applicant may seek a further review. The Tribunal has decided that a period of two years is an appropriate time limitation on a further application. In reaching this decision the Tribunal has regard to the applicant's age.

Orders

The orders of the Tribunal are:

1. The application is dismissed.
2. The applicant pay the respondent's cost of and incidental to the application.

This is a true copy of the reasons for determination in this matter.

G. Hazlett
Associate

31st July ~~2000~~ 2001.