

**Pharmacy Board of New South Wales****Gorgy [2000] NSWPB 1 (12 April 2000)**

Last Updated: 29 October 2004

Gorgy [2000] NSWPB 1**Ian Dean v Talat (Tom) Gorgy*****12 April 2000**

The complaint alleged convictions under the *Commonwealth Crimes Act* and professional misconduct in relation to the same matters involving false claims to the Health Insurance Commission. It was alleged that the pharmacist had altered prescriptions and submitted false claims over a 16 month period so that he fraudulently received payment to which he was not entitled of almost \$40,000 under the Pharmaceutical Benefits Scheme. He had altered approximately 2,000 prescriptions in various ways, including changing the number of repeats, and the strength and quantity of the prescribed medication. The pharmacist had also supplied non-claimable goods, in lieu of and in exchange for, prescriptions. He conceded that his conduct amounted to professional misconduct.

Held:

- 1. The pharmacist was guilty of professional misconduct and had been convicted in New South Wales of offences under S29D of the [Crimes Act 1914](#).*
- 2. He embarked upon a deliberate, dishonest and fraudulent course of action within months of becoming the owner of his pharmacy.*
- 3. There was no evidence of extenuating circumstances or that there would not be a repetition of the conduct.*
- 4. The name of the pharmacist should be removed from the Register.*

**(Editorial note: for details of the pharmacist's subsequent appeal to the District Court see [Gorgy v Dean \[2001\] NSWDC 1](#)).*

The facts are that over a sixteen month period, between June 1990 and September 1991, the pharmacist fraudulently received payment to which he was not entitled from the Commonwealth Health Insurance Commission from the Pharmaceutical Benefits Scheme by submitting claims which were false, and as a result of which he received almost \$40,000 to which he was not entitled.

The pharmacist was convicted in the District Court of 30 charges of fraud against the Commonwealth and with nineteen other charges of making false statements were taken into account. He was imprisoned for a period of two years, to be served by twelve months' imprisonment and twelve months to be of good behaviour.

It is conceded by the pharmacist that he varied approximately 2,000 prescriptions received in the pharmacy in the following ways:

1. He changed the form of medication on prescriptions which did not attract a benefit by substituting a medication which did attract a benefit.
2. He provided customers with non-claimable items in exchange for prescriptions which he did not dispense but which attracted a benefit.
3. He added to repeats which had been authorised by a medical practitioner.
4. On occasion when no repeats had been authorised by the medical practitioner, he included repeats.
5. He altered the strengths of medications noted on the prescriptions, eg by addition of the word "*forte*" to "*Panadeine*".
6. He changed the name or form of some medications to receive a benefit, eg "*Rotahaler*" was changed for "*Rotacaps*".
7. He altered the quantity of medication as shown on the prescription.
8. He altered the names of patients for which medication had been prescribed in order to obtain a benefit.
9. In relation to these repeats, he altered the date of the repeat authorisation to facilitate benefits.
10. He mimicked patients' signatures on some prescriptions.

In addition to these alterations, the pharmacist claimed payments for items which were never ordered by the medical practitioner by generating dispensing stickers which were not in accord with the prescription.

Counsel for the pharmacist conceded that the particulars of Complaints 1 and 2 constituted professional misconduct. Counsel for the complainant tendered in evidence a file of documents

which included, *inter alia*, a statement by Mrs Jennifer Nelson, pharmacist, dated 30 October 1999.

Mrs Nelson stated that Mr Gorgy's conduct demonstrated a lack of judgment and care in the practice of pharmacy and professional misconduct as regards to his ethical responsibilities. She concluded that his conduct was well below the standards of his peers, and that pharmacists of good repute and competence would strongly disapprove of his professional and ethical behaviour.

Mr Gorgy gave evidence before the Board. In addition a number of written testimonials were tendered on behalf of Mr Gorgy.

Mr Gorgy stated that he had purchased the *Narellan Pharmacy* in March 1990. He had been registered in 1986 and prior to his move to the *Narellan Pharmacy*, he had worked as an employed pharmacist in a number of pharmacies.

He stated he is a Deacon of the Coptic Christian Orthodox Church, having returned to the church at the time of the investigations relating to these matters. He sold his pharmacy in November 1998, following his conviction. He made a donation of \$100,000 to the Bowel Cancer Society, after obtaining advice from his priest, as a measure of deterrence and penance.

He remains strongly affiliated with the church.

He admits that these offences have caused serious disgrace to himself and his profession and his family, In addition, his conduct led to the breakdown of his marriage.

Initially, Mr Gorgy sought to explain his conduct in terms of benefit to the public. However, under cross examination, Mr Gorgy responded that his conduct had been driven by private interest.

Q: Your motivation in submitting these fake claims was to further your own interests?

A: Yes, I am the main gain of this interest, if you like to say, yes, definitely.

Q: And the reason you did it was to further your own interests?

A: Yes, yes, I am just telling a story. That doesn't mean I am saying I didn't get the benefit or not.....

Counsel for the complainant submitted that the proper and appropriate order for the Board to make was, pursuant to *section 20(1)(c)* of the *Act*, that the name of Talat Gorgy be removed from the Register.

In respect of that submission, *section 20(3)* of the *Act* provides:

The Board is not to suspend a person's registration or remove a person's registration or remove a person's name from the Register for having committed an offence if, having regard to

the nature of the offence or the circumstances under which it was committed, the Board is of the opinion that it does not render the person unfit in the public interest to be registered as a pharmacist.

The question to be answered is whether the Board is of the opinion that Mr Gorgy is unfit in the public interest to be registered at the present time.

In determining fitness to practice, the Board must look at the facts of the offence in conjunction with the evidence which has been tendered and to the pharmacist's current capacity and fitness (*Johnson v Walton*, [1996] NSWDC 2).

It is plain from the facts that the pharmacist embarked upon a deliberate, dishonest and fraudulent course of action. His dishonest behaviour commenced within months of becoming owner of the *Narellan Pharmacy*.

The gravity of these offences cannot be overestimated. His conduct was not the result of an isolated act but was a course of deliberate and sustained dishonesty involving forty-nine separate false claim forms, which themselves involved over two thousand prescriptions.

The protection of the public is paramount when considering allegations of professional misconduct. These offences involved defrauding the Pharmaceutical Benefits Scheme. The Pharmaceutical Benefits Scheme is a scheme designed for the benefit of the public. In order for this scheme to be successfully administered for the benefit of the public, the Commonwealth must rely on the honesty of those pharmacists who are approved to benefit commercially from the scheme. The successful administration of the Pharmaceutical Benefits Scheme lies at the heart of the practice of pharmacy.

Mr Gorgy has not only breached his position of trust in relation to the administration of the scheme but it is a circumstance of aggravation that he has taken advantage of his position in relation to the scheme to further his own private interests.

(Sentencing remarks dated 17 April 1998, Judge Davidson, *R v Gorgy*)

There is no evidence before the Board as to extenuating circumstances which may have driven Mr Gorgy to the commission of these offences.

There is no evidence on which the Board can rely as to whether it is likely that this conduct will not recur.

The references tendered on behalf of Mr Gorgy do not include any references from registered pharmacists, nor do they contain reference to the fact that Mr Gorgy is facing a complaint of professional misconduct. The references refer to subjective matters raised on his behalf. The significance of these subjective aspects are greatly outweighed by the objective seriousness of the offences proven against him.

The likelihood of repetition of the offence is an important factor in determining whether a person is fit to practise *Skinner v Beaumont* (1974) 2 NSWCR 106.

On the evidence before it the Board cannot be satisfied that there is no likelihood of repetition of the offence. There is no evidence of explanation for the commission of these offences other than personal gain, and no independent evidence of a change in character.

The protection of the public is paramount when considering allegations of professional misconduct. The protection of the public includes not only deterring the pharmacist in question from re-offending but also deterring others who might be tempted to fall short of the high standards required of them *Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408.

In addition, protection of the public is obtained by ensuring that those who are unfit to practise do not hold themselves out as fit to practise, and by ensuring that the maintenance of professional ethical standards are maintained [*Skinner v Beaumont* (1974) 2 NSWLR 106].

Mr Gorgy's behaviour displayed a deliberate, sustained and dishonest attitude to the practice of pharmacy. He breached his professional duties and responsibilities and the trust placed in him as an administrator of the Pharmaceutical Benefit Scheme. His behaviour was clearly likely to bring the profession of pharmacy into disrepute by breaching the public trust that by necessity must be placed in pharmacists for the successful administration of the Pharmaceutical Benefit Scheme, and the very core of the successful practice of pharmacy.

The Board finds:

1. Mr Gorgy has been convicted in New South Wales of offences under *section 29D* of the *Crimes Act 1914*.
2. Mr Gorgy has been guilty of professional misconduct within the meaning of *sections 19A(a)* and *(g)* of the *Act* in that during the period 1 June 1990 until 17 September 1991 he engaged in conduct that:
 - (i) demonstrates a lack of adequate knowledge, experience, judgment or care in the practice of pharmacy, and/or
 - (ii) demonstrates other improper or unethical conduct relating to the practice of pharmacy.

Accordingly, pursuant to *section 20D* of the *Pharmacy Act*, the Board orders that the name of Talat Gorgy be removed from the Register of Pharmacists for New South Wales.

The effective date of this order is one month from the date on which the pharmacist was advised by registered post at his address as it appears on the Register.