



VICTORIAN GOVERNMENT
SOLICITOR'S OFFICE

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5 May 2010

Principal Registrar
Victorian Civil and Administrative Tribunal
DX 210576



Dear Principal Registrar

**Referral under the *Health Professions Registration Act 2005*
*Chiropractors Registration Board of Victoria v Dr Malcolm Hooper***

We act on behalf of the Chiropractors Registration Board of Victoria (**Board**).

Referral to VCAT

1. On 8 April 2010, the Board decided, pursuant to section 59(2)(g) of the *Health Professions Registration Act 2005 (Act)*, to refer the conduct of Dr Malcolm Hooper, at all relevant times a registered chiropractor, to the Victorian Civil and Administrative Tribunal (VCAT) for a Tribunal hearing.
2. Section 59(2)(g) is contained in Part 3 of Division 5 of the Act – ‘Investigations and Panel Hearings’. Relevantly, it provides:

After an investigation is completed under this Division, and the investigator has made a report to the board, the responsible board may:

...

(g) in the case of a health practitioner, refer the matter to VCAT for a Tribunal hearing.

3. On 9 March 2010, the Board also decided, pursuant to section 59(2)(g) and section 76(2) of the Act, to apply to VCAT for an order in respect of Dr Hooper, as it was of the opinion that he was not of good character.
4. Section 76(2) is contained in Part 4, Division 1 of the Act – ‘Proceedings and Review by VCAT’. Relevantly, it provides:

The responsible board may apply to VCAT for an order under this Division in respect of a health practitioner if the board is of the opinion that the health practitioner is not of good character.

5. Accordingly, we are instructed to refer this matter to VCAT for a Tribunal hearing. We enclose a Notice of Allegations and a cheque for \$300.40.

Order pursuant to section 146 of the *Victorian Civil and Administrative Tribunal Act 1998*

6. In referring this matter to VCAT, the Board seeks an order pursuant to section 146(4)(b) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (VCAT Act) that inspection of the file in this matter be limited to the parties to the proceeding.
7. Inspection of the file or obtaining a copy of the file in this matter, by members of the public, has the real potential to undermine the Board's capacity to perform its statutory functions of investigating the professional conduct and ability to practise of registered practitioners by causing notifiers, practitioners and witnesses to be less inclined to make a full and frank disclosure to the Board in the conduct of future notifications received by the Board.

Order pursuant to section 101 of the VCAT Act

8. We also note that at the first directions hearing in this matter, pursuant to section 101(3)(c) of the VCAT Act, the Board will seek an order that any information which might enable the notifier in this matter, Mr Ercan Tekin to be identified, not be published and/or made available to the public in general.
9. The Board will seek this order under section 101(3)(c) (on the basis that it is necessary to protect the interests of justice) (see section 101(4)(b) of the VCAT Act). Pursuant to section 118(1)(e) of the Act, it is the role of the Board to 'investigate the professional conduct, professional performance or ability to practice of registered health practitioners and impose sanctions where necessary'.
10. In performing this role, the Board relies on members of the public to notify it and provide information to it about issues associated with the professional conduct, professional performance and ability to practise of registered health practitioners (see section 42 of the Act). Protecting the privacy of members of the public who make a notification to the Board or provide assistance to the Board is essential if the Board is to ensure that those members of the public are prepared to draw relevant issues to the attention of the Board.

Tribunal Hearing: Matters to be considered by VCAT

11. The Board has referred this matter to VCAT so that VCAT may conduct a Tribunal hearing in relation to the allegations set out in the Notice of Allegations **attached** to this letter.

Findings available to the Tribunal

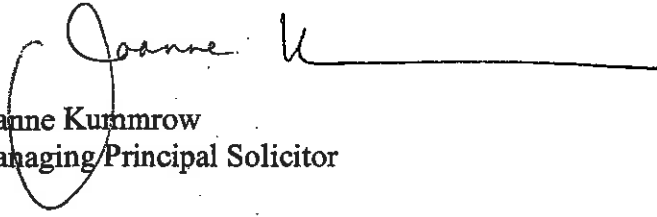
12. The Board contends that Dr Hooper engaged in unprofessional conduct and/or professional misconduct as defined in section 3(1) of the Act pursuant to section 77(1)(a) and that he is not of good character pursuant to section 77(1)(d) of the Act.

Determinations available to the Tribunal in respect of conduct

13. If the Tribunal finds that Dr Hooper has engaged in unprofessional conduct and/or professional misconduct, the Tribunal may make one or more of the following determinations:
 - 13.1 That Dr Hooper undergo counselling (section 77(4)(a) of the Act);
 - 13.2 That Dr Hooper be cautioned (section 77(4)(b) of the Act);
 - 13.3 That Dr Hooper be reprimanded (section 77(4)(c) of the Act);
 - 13.4 That Dr Hooper be required to undertake and complete specified further education or training within a specified period (section 77(4)(d) of the Act);
 - 13.5 That a condition be imposed on the registration or endorsement of the registration of Dr Hooper (section 77(4)(e) of the Act);
 - 13.6 That a fine of not more than \$50,000 be imposed on Dr Hooper, to be paid to the Board (section 77(4)(f) of the Act);
 - 13.7 That the registration of Dr Hooper be suspended for a specified period (section 77(4)(g) of the Act);
 - 13.8 That the registration of Dr Hooper be cancelled (section 77(4)(h) of the Act);
 - 13.9 That Dr Hooper undertake a specified period of practice under specified supervision (section 77(4)(i) of the Act);
 - 13.10 That Dr Hooper do or refrain from doing something in connection with the practice of his health profession (section 77(4)(j) of the Act);
 - 13.11 That Dr Hooper's practice be conducted for a specified period in a specified way or subject to specified conditions (section 77(4)(k) of the Act);
 - 13.12 That Dr Hooper's practice be subject to periodic inspection by a specified person for a specified period (section 77(4)(l) of the Act);
 - 13.13 That Dr Hooper's report on his health practice at specified intervals (section 77(4)(m) of the Act);
 - 13.14 That Dr Hooper not employ, engage or recommend a specified person of class of persons (section 77(4)(n) of the Act); or
 - 13.15 That Dr Hooper be disqualified from applying for registration within a specified period if his registration is cancelled (section 77(4)(o) of the Act).

If you have any queries in relation to this referral or the enclosed Notice of Allegations, please do not hesitate to contact Joanne Kummrow on 9032 3009.

Yours faithfully
Victorian Government Solicitor's Office

A handwritten signature in black ink, appearing to read "Joanne K", with a long horizontal line extending to the right. The signature is written over the printed name and title.

Joanne Kummrow
Managing/Principal Solicitor

Encl.

Notice of Allegations

Failure to Make a Proper Assessment

1. On or around 27 and 29 August 2007, Dr Malcolm Hooper failed to undertake or direct that a proper assessment be undertaken prior to recommending that his patient, Ercan Tekin, undertake costly treatment in the form of approximately 230 hours of hyperbaric oxygenation (HBO) treatment costing between \$100-\$150 per hour and approximately 70 hours of Lokomat treatment at \$220 per hour.

PARTICULARS

- (a) On 27 August 2007, Mr Tekin attended Dr Hooper's HyperMED Neurorecovery Australia Clinic at Level 13, 15 Collins Street, Melbourne and sought HBO treatment in preparation for possible future stem cell treatment of cerebral palsy.
- (b) Dr Hooper conducted an initial consultation on 27 August 2007 with Mr Tekin and recommended during that consultation that he undergo an MRI scan prior to undertaking HBO and/or Lokomat treatment.
- (c) The MRI scan undertaken on 7 September 2007, after treatment had commenced, and whose results were communicated on the same day to Dr Hooper, provided no legitimate basis for Dr Hooper to recommend to Mr Tekin that he commence a programme of HBO and/or Lokomat treatment and yet on 27 and 29 August 2007 respectively, Dr Hooper recommended to Mr Tekin that on that day he should commence such treatment.
- (d) Dr Hooper failed to consult with and/or make inquiries with Mr Tekin's other treating health practitioners in relation to Mr Tekin's condition (ie cerebral palsy) and symptomatology and the suitability and likely effectiveness of Mr Tekin undertaking HBO and/or Lokomat treatment.

Failure to Obtain Informed Consent

2. On or around 27 and 29 August 2007, and prior to commencing HBO and Lokomat treatment on 27 and August 2007 respectively, Dr Hooper failed to obtain informed consent, or sufficiently informed consent, from Mr Tekin in relation to undertaking the costly HBO and Lokomat treatment which he recommended.

PARTICULARS

- (a) Dr Hooper failed to advise Mr Tekin prior to the commencement of either the HBO or the Lokomat treatment what were its advantages, disadvantages or contra-indications.
- (b) Dr Hooper failed to advise Mr Tekin prior to the commencement of either the HBO or the Lokomat treatment what were its limitations for his condition and symptomatology.
- (c) Dr Hooper failed to advise Mr Tekin prior to the commencement of either the HBO or the Lokomat treatment what were its likely outcomes.

- (d) Dr Hooper failed to advise Mr Tekin of any options other than HBO or Lokomat treatment which he might consider, rather than submission to and expenditure on HBO and Lokomat treatment.
- (e) Dr Hooper failed to advise Mr Tekin of risks that could arise in the course of the provision of HBO and/or Lokomat treatment.

Failure to Prepare and Modify Treatment Plan

- 3. Prior to the commencement of HBO and Lokomat treatment and until the last day of treatment, namely between approximately 27 August 2007 and 13 May 2008, Dr Hooper failed to prepare a treatment plan setting out the planned recommended treatment and how and when HBO or Lokomat treatment would be reviewed in order to evaluate any improvements or progress (or lack thereof) in Mr Tekin's condition (cerebral palsy) or symptomatology.

PARTICULARS

- (a) At no stage during the provision of HBO and Lokomat treatment did Dr Hooper develop a treatment plan or a review of Mr Tekin's response to HBO or Lokomat treatment.
- (b) Dr Hooper allowed Mr Tekin to undertake HBO treatment and Lokomat treatment in the absence of a treatment plan.
- (b) Dr Hooper did not discuss a treatment plan with Mr Tekin prior to the commencement of either HBO or Lokomat treatment or during the provision of such treatment.

Failure to Liaise with Other Treating Health Practitioners

- 4. Prior to the commencement of HBO and Lokomat treatment and until the last day of treatment, namely between approximately 27 August 2007 and 13 May 2008, Dr Hooper failed to consult or communicate with Mr Tekin's treating health practitioners in relation to his condition (cerebral palsy), his symptomatology and his general health, or as to the suitability and/or effectiveness of Mr Tekin undertaking HBO treatment and/or Lokomat treatment.

Failure to Monitor Outcomes

- 5. On or around 27 and 29 August 2007 and 13 May 2008, Dr Hooper failed to monitor or evaluate any measurable improvements (or otherwise) in Mr Tekin's condition (cerebral palsy) or symptomatology attributable to the HBO treatment or Lokomat treatment provided to him or alter such treatment in order to maximise any possible improvements in his condition or symptomatology.

PARTICULARS

- (a) During the treatment Dr Hooper did not conduct ongoing evaluation of any measurable improvements (or otherwise) in Mr Tekin's condition or

symptomatology attributable to the HBO treatment or Lokomat treatment provided.

- (b) Dr Hooper continued to allow Mr Tekin to continue to undertake HBO treatment and Lokomat treatment in the absence of any measurable improvements or progress (or lack thereof) in Mr Tekin's condition and/or symptomatology.
- (c) Dr Hooper failed to keep adequate and detailed records of any observations as to improvements or progress (or lack thereof) in Mr Tekin's condition (ie cerebral palsy) and/or symptomatology.

Misrepresentation of Likely Efficacy of Treatment

- 6. In recommending the provision of HBO and Lokomat treatment by his clinic HyperMED to Mr Tekin, Dr Hooper misrepresented the likely effectiveness of such treatment in relation to cerebral palsy.

PARTICULARS

- (a) In recommending such treatment to Mr Tekin, Dr Hooper did not provide a balanced view of the effectiveness of such treatment in relation to cerebral palsy, including a statement that such treatment is not routinely used in Australia and/or overseas in treating cerebral palsy.
- (b) Dr Hooper did not disclose to Mr Tekin that such treatment in relation to cerebral palsy is not advocated by qualified registered medical practitioners or medical representative organisations in Australia.
- (c) Dr Hooper's recommendation of such treatment to Mr Tekin did not set out the health risks associated with such treatment in relation to cerebral palsy.
- (d) Dr Hooper did not disclose to Mr Tekin that available medical and scientific evidence published in internationally respected peer reviewed journals does not support the effectiveness of treatment of cerebral palsy or its symptomatology with the use of HBO or Lokomat treatment.
- (e) Dr Hooper did not disclose to Mr Tekin that the provision of HBO treatment in relation to cerebral palsy is contrary to the views of qualified registered medical practitioners.
- (f) Dr Hooper did not disclose to Mr Tekin that HBO and Lokomat treatment for cerebral palsy is novel and non-mainstream.
- (g) Dr Hooper did not disclose to Mr Tekin that HBO treatment was not appropriate for the treatment of cerebral palsy or its symptomatology in that, in spite of its expense, it provides no specific benefit to the patient.

Misleading and Deceptive Advertising

- 7. In promoting the provision of HBO treatment and Lokomat treatment by his HyperMED clinic on its website (<http://www.hypermed.com.au/>) in relation to numerous listed medical conditions between 27 August 2007 and 3 March 2010, Dr Hooper engaged in advertising that was misleading and deceptive in that he invited

inaccurate inferences to be drawn by potential patients about the effectiveness of such treatment in relation to those listed conditions.

PARTICULARS

- (a) Dr Hooper did not provide a balanced view of the effectiveness of such treatment in relation to the listed medical conditions, including a statement that such treatment is not routinely used in Australia and/or overseas in treating such medical conditions.
- (b) Dr Hooper did not disclose that such treatment in relation to the listed medical conditions is not advocated by qualified registered medical practitioners or medical representative organisations in Australia.
- (c) Dr Hooper's HyperMED advertising and literature did not disclose that available medical and scientific evidence does not support the effectiveness of treatment for the listed medical conditions with the use of HBO and Lokomat treatment.
- (d) Dr Hooper did not disclose to Mr Tekin that HBO and Lokomat treatment for cerebral palsy is novel and non-mainstream.
- (e) Dr Hooper's HyperMED advertising and literature did not disclose that HBO treatment is not appropriate for the treatment of the listed medical conditions in that no medical or scientific evidence published in internationally respected peer reviewed journals exists to demonstrate it provides substantive benefits.

Inadequate Clinical File

- 8. In providing to Mr Tekin treatment (including HBO and Lokomat treatment), Dr Hooper failed in his professional responsibilities by generating seriously inadequate clinical documentation including:
 - (a) Mr Tekin's medical history;
 - (b) Mr Tekin's current symptomatology;
 - (c) Mr Tekin's suitability for treatment;
 - (d) advice provided by Dr Hooper as to risks, options, advantages, disadvantages and side-effects of proposed treatment;
 - (e) questions and issues raised by Mr Tekin as to HBO and Lokomat treatment;
 - (f) treatment actually provided (including on the occasion referred to in Allegation 9, hereunder);
 - (g) Mr Tekin's response to the HBO and Lokomat treatment;
 - (h) treatment planning (if there was any);
 - (i) progress in treatment;
 - (j) need for other or further treatment; and

- (k) communications between him and his patient about significant matters arising during the course of provision of treatment (other than moneys owed).

Unlawful Administration of Acupuncture

- 9. In or around September 2007, Dr Hooper engaged in acupuncture on Mr Tekin without being registered by the Chinese Medicine Registration Board or endorsed to do so by the Chiropractors Registration Board of Victoria (the Board):

PARTICULARS

- (a) In or around September 2007 whilst on his way to the HyperMED clinic, Mr Tekin was struck by a car.
- (b) Upon seeing that Mr Tekin was in pain, when Mr Tekin attended upon Dr Hooper on the same day, Dr Hooper examined Mr Tekin's back and offered to perform acupuncture.
- (c) Dr Hooper performed acupuncture on Mr Tekin's back, using two needles, when he was not registered to do so by the Chinese Medicine Registration Board.
- (d) Dr Hooper performed acupuncture on Mr Tekin's back when he his registration as a Chiropractor was not endorsed to provide acupuncture.

Misleading the Board

- 10. Dr Hooper misled the Board as to the nature and recency of his clinical practice as a chiropractor.

PARTICULARS

- (a) In an interview with the Board's investigator, Mr Wayne Gladman conducted on 29 July 2009, Dr Hooper responded to a question as to whether he provided any chiropractic services from his HyperMED clinic that no invoices are raised under his chiropractic provider number and that this been the situation probably for more than five to eight years.
- (b) On or around 26 February 2010, in responding to a request for information from the Board about the recency of his practice as a chiropractor in the past four years, Dr Hooper responded that he had 'practised continuously as a Chiropractor since 1983 including the past 4 years'.
- (c) On or around 26 February 2010, in responding to a request for information from the Board about the manner of services provided over the past four years in practising as a chiropractor, Dr Hooper responded that he had 'performed a full range of Chiropractic services over the previous 4 years period' including 'consultation with patients, therapy and counselling and physical therapy including manual adjusting techniques, trigger point, acupuncture and exercise rehabilitation'.

- (d) On or around 26 February 2010, in responding to a request for information from the Board about the frequency of services provided over the past four years in practising as a chiropractor, Dr Hooper responded that 'over the period in question I have maintained a full time practice as a chiropractor consulting somewhere between 100 and 200 patients per week'.