

case study

Date: 14 November 2011

Kozanoglu v The Pharmacy Board of Australia [2011] VCAT 2085

The Pharmacy Board of Australia took immediate action pursuant to s.156 of the National Law against a pharmacist following receipt of a notification about the pharmacist from a police officer advising that a raid conducted at the pharmacist's business had located commercial quantities of the drug dextromethorphan (DXM), a Schedule 4 drug which it was stated was 'known to be abused'. The notification also advised that three unlicensed weapons were also seized from the pharmacy.

Facts

The Board took immediate action against the pharmacist in terms that he not practise as a pharmacist and he not hold keys to any pharmacy.

It was submitted on behalf of the practitioner that s.156 requires the Tribunal to consider the practitioner's conduct and whether that conduct amounted to professional misconduct as that term is defined in the National Law, namely:

"conduct of the practitioner, whether occurring in connection with the practise of the health practitioner's profession or not, that is inconsistent with the practitioner being a fit and proper person to hold registration in the profession."

The practitioner submitted that this required the Tribunal to consider his conduct as a pharmacist and decide whether he is a 'fit and proper person to continue to hold registration'.

The Tribunal rejected this approach and stated that s.156 required it to consider the applicant's conduct as shown by the evidence before it. It was

stated that the Tribunal must decide on the evidence whether it reasonably believes the evidence to show that the applicant's conduct poses a serious risk to persons such that it is necessary for the taking of immediate action to protect public health and safety. The Tribunal must assess the conduct of the applicant relative to the risk posed by the conduct to the public health and safety and decide what (if any) immediate action needs to be taken.

On this occasion the Tribunal found that the applicant was entitled to the full benefit of the presumption of innocence until convicted of a criminal offence and in the circumstances he should not be deprived of his ability to earn his living. The Tribunal therefore overturned the Board's decision and allowed the applicant to return to work as a pharmacist, albeit under full supervision. He was also prevented from importing any scheduled drugs into Australia.

This publication is intended to provide a general outline and is not intended to be and is not a complete or definitive statement of the law on the subject matter. Further professional advice should be sought before any action is taken in relation to the matters described in this publication.

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