

MEDICAL BOARD OF AUSTRALIA V DE SILVA [2016] QCAT 63 (DELIVERED ON 30 MAY 2016)

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Allegation of unsatisfactory professional conduct referable to post operative care and treatment of a patient.

Facts

Dr de Silva was engaged as a consultant physician to assist with a patient's postoperative care following a laparotomy and adhesiolysis, performed by Dr Fitzgerald.

Dr de Silva first saw the patient on 10 January 2009. He ordered Lasix and blood tests. The results were in excess of the normal range. On the afternoon of the following day, Dr de Silva again reviewed the patient and ordered further blood tests, which revealed that the patient's condition was worsening.

Dr de Silva was contacted by nursing staff on the night of 11 January 2009, after the patient had developed rapid atrial fibrillation. Dr de Silva prescribed an anti-arrhythmic drug and the patient reverted to a normal rhythm. He instructed nursing staff to bring these matters to Dr Fitzgerald's attention.

By 12 January 2009, the patient had developed life threatening peritonitis requiring emergency surgery.

A complaint was made about Dr de Silva. In the referral to QCAT made by the Medical Board of Australia under the *Health Practitioners (Disciplinary Proceedings) Act 1999* (Qld) it was alleged that Dr de Silva had behaved in a way that constituted unsatisfactory professional conduct, by:

- Failing to personally attend on the patient on the night of 11 January 2009; and
- Failing to discuss the patient and her concerns directly with Dr Fitzgerald.

Decision

Dr de Silva accepted that he ought to have brought the clinical signs, symptoms and test results to the attention of Dr Fitzgerald. Dr De Silva admitted his failure to bring matters to the attention of Dr Fitzgerald contributed to a delay in treatment, and amounted to unsatisfactory professional conduct, being conduct of a lesser standard than that which might reasonably be expected of him by the public and his professional peers. He did not, however, admit that his

unsatisfactory conduct amounted to professional conduct that demonstrated incompetence or lack of knowledge, skill, judgment of care in the practice of this profession.

The Tribunal noted that Dr Fitzgerald had ultimate responsibility for the welfare and care of the patient as her treating surgeon. Dr de Silva was involved in treating the patient for a period of 48 hours only, and although he did not directly contact Dr Fitzgerald, he did make notes on the patient's records and instructed nursing staff to discuss those result with Dr Fitzgerald.

Notwithstanding the admissions by Dr De Silva, experts retained by both Dr de Silva and the Board (Associate Professor Llewellyn Davies and Dr Ted Ringrose) expressed the opinion that the steps taken and treatment provided by Dr de Silva were appropriate in the circumstances. It was suggested that direct contact with Dr Fitzgerald was another option open to Dr de Silva, but would not have resulted in any alteration of treatment.

Orders

The Board and Dr de Silva proposed a sanction comprised of a caution and an undertaking by Dr de Silva that he will complete an education course in professional communication.

The Tribunal was satisfied with the sanction proposed by the parties and made orders to that effect.

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