Australian
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Bulletin

Disciplinary action against a medical practitioner for aiding and abetting suicide – Health Care Complaints Commission v Godwin

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Summary

The Health Care Complaints Commission (**HCCC**) applied for disciplinary findings against a registered medical practitioner under the Health Practitioner Regulation National Law as adopted in New South Wales[1] (**National Law**) for aiding and abetting in the suicide of his partner (patient) in 2014 contrary to s 31C(1) of the Crimes Act 1900 (NSW).[2] Dr Godwin, a registered medical practitioner who specialised in skin cancer treatment was charged by the police for his role in the patient's suicide. In 2018, Dr Godwin was convicted of the offence and sentenced to 12 months' imprisonment served by way of an intensive corrections order.

The HCCC also alleged that Dr Godwin provided inappropriate care and treatment to the patient, in circumstances where he was in a close personal relationship with the patient. This allegation was also based on claims that the medical practitioner prescribed Sch 8 medications to his patient and kept deficient clinical records, in breach of the Medical Board of Australia's *Code of Conduct (Good Medical Practice: A Code of Conduct for Doctors in Australia, 2014)* **(Code of Conduct)**.

The conduct and criminal proceeding

Dr Godwin first became a registered medical practitioner on 2 December 1978.[3] He became a sole practitioner in 1983.[4] Dr Godwin first met the patient, a nurse practitioner, in February 2012.[5] By July 2012, they were living together. In May 2014, two months before her death, the patient and Dr Godwin participated in a non-binding marriage ceremony.[6] In 2006, the patient was diagnosed with cancer and was terminally ill throughout 2014.[7] At the time of her death, she only had a few weeks to live and had made it clear to her family that she would have control over her life and how long she would endure the suffering associated with the cancer and treatment of it.[8]

On the morning of 22 July 2014, the patient's mother, children and grandchildren gathered to spend quality time with her family and say goodbye.[9] During the gathering, the patient gave directions for the funds of her bank account to be distributed to her three children.[10] She also gave specific directions about lodging tax returns and managing her property.[11]

Dr Godwin was aware that the patient intended to take her own life on 22 July 2014 and agreed to assist her.[12] In the evening of 22 July 2014, Dr Godwin set up a drip and cannula into the patient and loaded morphine into the drip, including from his supply, which would be administered to the patient to end her life.[13] When the morphine did not flow through the drip, Dr Godwin manually pumped or squeezed the morphine bag through to the patient.[14] Dr Godwin waited until the patient became unconscious and then left the patient and the premises in which they were staying, intending to return to find her deceased.[15] Dr Godwin returned to the patient about 15–30 minutes later to find that she was alive, was taking breaths and was unconscious.[16] Dr Godwin held his hands over the patient's nose and mouth for up to 30 seconds, to stop the patient breathing and end her life.[17]

At 11.14 pm, Dr Godwin called Emergency Services and said that his terminally ill wife told him to leave the house and upon his return discovered that she had killed herself.[18] The ambulance found the patient with a butterfly needle in her right arm connected to a cannula with a bag of fluids.[19]

At 11.30 pm, the police arrived and spoke to Dr Godwin who told them that at 9.30 pm the patient told him to go out and get some groceries.[20] When he returned at 11.15 pm he found her dead.[21] Dr Godwin also showed the police the laptop which belonged to the deceased with a letter headed "Letter to Police".[22]

On 24 July 2014, an autopsy was conducted which indicated that the direct cause of death was opiate toxicity.[23] On 17 October 2014, when interviewed by the police, Dr Godwin stated that he did not know where the patient had obtained the morphine from and denied putting a drip in the deceased's arm before leaving the premises.[24]

In 2015 Dr Godwin commenced another relationship, which ended in December 2017.[25] Dr Godwin made admissions to his new partner regarding the patient's death.[26] The partner reported this to the police and a criminal investigation commenced.[27] On 28 February 2018, Dr Godwin was arrested and charged with aiding and abetting the suicide of another under s 31C of the Crimes Act 1900 (NSW).[28] On 19 December 2018, Dr Godwin was convicted of the offence and sentenced to 12 months' imprisonment to be served by way of an intensive corrections order.[29]

The disciplinary allegations

The HCCC applied to the New South Wales Civil and Administrative Tribunal (**Tribunal**) for disciplinary findings in relation to six complaints. Five of those complaints alleged that Dr Godwin had engaged in unsatisfactory professional conduct under the National Law. Unsatisfactory professional conduct of a registered health practitioner includes conduct that demonstrates the knowledge, skill or judgement possessed, or care exercised, by the practitioner in the practice of the practitioner's profession is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.[30]

The sixth complaint alleged that Dr Godwin was guilty of professional misconduct. Professional misconduct is defined in the National Law as:

(a) unsatisfactory professional conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner's registration;[31] or

(b) more than one instance of unsatisfactory professional conduct that, when the instances are considered together, amount to conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner's registration.[32]

Unsatisfactory professional conduct

The HCCC complained that Dr Godwin was convicted of aiding and abetting in the suicide of his partner. Under s 144(1)(a) of the National Law, a complaint can be made that the practitioner has, either in this jurisdiction or elsewhere, been convicted of or made the subject of a criminal finding for an offence.[33]

The HCCC also complained that Dr Godwin had engaged in improper or unethical conduct relating to the practice or purported practice of medicine.[34] This complaint particularised Dr Godwin's involvement in assisting the patient to suicide and also included the fact that Dr Godwin did not tell the truth and made false statements to police when questioned in 2014.[35] When communicating with the police officers and ambulance officers about the circumstances of the patient's death, he maintained the following falsehoods:[36]

(a) that he did not assist Patient A to commit suicide;[37]

(b) that when he left Patient A's side on 22 July 2014, she did not have a cannula in her arm and did not have a drip;[38]

(c) that Patient A might have self-inserted the drip and cannula into her arm and that he did not do so;[39]

(d) that he did not know what drugs were used in Patient A's drip;[40]

(e) that patient A did not inform the practitioner that she would be taking her own life prior to him leaving the premises;[41] and

(f) that when he returned to Patient A and the premises she was deceased and in the same condition as when ambulance officers arrived.[42]

The Tribunal found that this amounted to unsatisfactory professional conducted under s 139B(1)(l) of the National Law because it was "improper and unethical conduct relating to the practice of medicine".[43]

Further, the HCCC alleged that Dr Godwin prescribed Sch 4 and Sch 8 medications to the patient on 37 occasions between 10 October 2012 and 18 July 2014,[44] without adequate assessment of the patient and in circumstances where Dr Godwin was in a close personal relationship with the patient.[45] Schedule 9 medicines are controlled substances that have a high potential for abuse and addiction.[46] From October 2012, the patient had a team of medical practitioners supporting her, including a general practitioner and a palliative care team.[47] Dr Godwin also inappropriately investigated and treated the patient's medical conditions by initiating pathology tests, including biopsies, on ten occasions with results being copied to general practitioners and specialists.[48] The Tribunal found this allegation proven.[49]

The Tribunal did not accept that Dr Godwin was constantly assessing the patient in the same way that an independent treating doctor would have assess her.[50] Further, the patient's own assessment of her pain, even as a nurse practitioner, was not a substitute for an objective assessment by a treating doctor.[51] The Tribunal also held that Dr Godwin was operating independently with very little communication with other treating doctors.[52] The fact that he was in a close personal relationship with the patient meant that he lacked objectivity and was in breach of the Code of Conduct.[53]

The HCCC alleged that Dr Godwin was guilty of unsatisfactory professional conduct in that he failed to maintain adequate records.[54] Dr Godwin did not record an adequate level of detail for his prescribing to the patient including and information or advice given to the patient, his assessment of the patient or the patient's

conditions warranting his prescriptions.[55] The Tribunal found Dr Godwin guilty of unsatisfactory professional conduct.[56]

Professional misconduct

The final complaint alleged against Dr Godwin is that he was guilty of professional misconduct under s 139E of the National Law.[57]

The HCCC alleged that aspects of the conduct were of a sufficiently serious nature to justify cancellation of Dr Godwin's registration.[58] Specifically, the HCCC alleged that the following conduct ought to be characterised as professional misconduct:[59]

a the conduct underlying the criminal conviction, that is, Dr Godwin's role in assisting the patient to suicide and not telling the truth to the police (complaint 3);

b inappropriate medical care and treatment (complaint 4); and

c the inadequate recording keeping (complaint 5).

When assessing whether conduct is professional misconduct, the gravity of the particular conduct is not measured by reference to the worst cases, but rather by reference to the extent it departs from proper standard.[60] The essential task is the characterisation of the professional misconduct, which looks at the seriousness, not the consequences, of the conduct.[61] The main task is determining how much the conduct departs from proper standards.[62]

In the Tribunal's view, complaint three, by itself, justified a finding of professional misconduct.[63] Not only did Dr Godwin help the patient die of suicide but he deliberately gave false information to police to avoid prosecution.[64] He used his knowledge as a doctor to convince investigating police officers that the patient took her own life without any involvement from him.[65] Overall, the Tribunal considered his conduct was sufficiently serious to justify suspension or cancellation of Dr Godwin's registration.[66]

However the Tribunal did not consider the conduct of providing medical care and treatment to the patient when he was in a close personal relationship with the patient and the failure to comply with mandatory record keeping were of a sufficiently serious nature to justify suspension or cancellation of his registration.[67] While the Tribunal found that this conduct amounted to unsatisfactory professional conduct, it held that it was understandable, at least in the last few months of her life, that Dr Godwin was trying to avoid the inconvenience of asking treating doctors to provide scripts.[68] This was, in the Tribunal's view, a mitigating factor.[69] This was despite the Tribunal finding that Dr Godwin did not appreciate that he was treating the patient, and not just writing scripts that others had recommended and that he conceded that other treating doctors were not aware that he was prescribing the vast majority of the Sch 8 medications for pain relief.[70]

Disciplinary determinations

Orders arising from a disciplinary proceeding are protective in nature, not punitive. Factors such as insight, remorse, specific deterrence, general deterrence, protection of the public, maintenance of professional standards and the protection of the reputation of the profession are important facts that ought to be considered by a Tribunal when deciding the appropriate determination for the conduct.

The Tribunal accepted that:

(a) Dr Godwin did no more than what the patient had wished for and was not motivated by self-interest or greed and he had the support of the patient's family.[71]

(b) Dr Godwin was a highly regarded general practitioner. Apart from the circumstances outlined in the complaints, Dr Godwin was a competent practitioner and a person of good character.[72]

(c) Dr Godwin did not pose a risk to the health and safety of his patients or the public generally.[73]

(d) Dr Godwin showed insight and was genuinely remorseful.[74]

Despite these considerations, the Tribunal went on to consider an important component of disciplinary proceedings — the need to denounce the conduct and the protection of the reputation of the medical profession.[75] The main consideration was the objective seriousness of Dr Godwin's conduct and how the community would view his behaviour.[76]

At the time of the hearing before the Tribunal, voluntary assisted dying laws had been introduced into the NSW Parliament but had not passed into law. The Tribunal commented that: "[t]here are a range of opinions about the desirability of regulating voluntary assisted dying in New South Wales, both among general practitioners and the broader community."[77]

The Tribunal commented that it was not its role to express any view about the controversial practical and ethical issues arising from assisted voluntary dying nor to assess the level of support for law reform.[78] Rather, it was the Tribunal's role to consider the objective seriousness of the conduct and how the community would regard the medical practitioner's behaviour.[79] While the Tribunal accepted that the patient was terminally ill and suffering intolerable pain, that Dr Godwin did no more than what the patient had wished for and that many

people would "understand and empathise with Dr Godwin's plight";[80] it also considered that his actions constituted unethical conduct of a serious kind.[81] To maintain the reputation of the medical profession and the confidence in which the profession is held in the community, the Tribunal reprimanded Dr Godwin and suspended his registration for six months.[82]

Voluntary assisted dying in Australia

Voluntary assisted dying legislation now exists in all states, with the NSW legislation, (the Voluntary Assisted Dying Bill 2021 (NSW), referred to by the Tribunal) passing on 19 May 2022. It is still an offence in NSW and in every other state and territory, even with Assisted Dying legislation, for a person to counsel, aid and assist a person to commit suicide. In NSW under s 31C of the Crimes Act 1900[83] this offence carries a maximum penalty of ten years in prison. A person found guilty of engaging in active voluntary euthanasia can also be prosecuted for murder under s 18 of the Crimes Act 1900, which carries a maximum penalty of life imprisonment.[84]

Importantly, even if voluntary assisted dying laws in NSW had been passed, there are concerning matters about Dr Godwin's conduct that are still likely to have warranted disciplinary action. Voluntary assisted dying laws must be strictly adhered to and are not intended to override the Code of Conduct or any other codes and guidelines applying to a registered medical practitioner.

The Euthanasia Laws Act 1997 (Cth) prevents the Australian Capital Territory and Northern Territory from making laws concerning euthanasia. Schedule 1 of the Act amended the Northern Territory (Self-Government) Act 1978 and Sch 2 of the Act amended the Australian Capital Territory (Self-Government) Act 1988 preventing the respective territories from making laws which permit or have the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life.[85]

The following is a summary of the current status of voluntary assisted dying in the other states of Australia. The NSW legislation, having just passed at the time of publication of this article, is still awaiting royal assent and will commence 18 months after the date of assent.

Victoria

Voluntary assisted dying is legal in Victoria under the Voluntary Assisted Dying Act 2017 (Vic) and commenced on 19 June 2019. The Act provides for and regulates access to voluntary assisted dying,[86] which is defined as the administration of a voluntary assisted dying substance and includes steps reasonably related to such administration.[87]

A person will be eligible if they are diagnosed with a disease, illness or medical condition that is:

(a) incurable;
(b) advanced, progressive and will cause death;
(c) expected to cause death within six months (or, in the case of a person with a neurodegenerative disease, illness or condition, within 12 months); and
(d) causing suffering to the person that cannot be relieved in a manner that the person finds tolerable.[88]

Importantly, a registered health practitioner is prohibited from initiating a discussion about voluntary assisted dying or suggesting voluntary assisted dying to a person, but can provide information about voluntary assisted dying at a person's request.[89]

Western Australia

Voluntary assisted dying is legal in Western Australia under the Voluntary Assisted Dying Act 2019 (WA), which commenced on 1 July 2021.

A person will be eligible if they are diagnosed with at least one disease, illness or medical condition that:

(a) is advanced, progressive and will cause death;
(b) will, on the balance of probabilities, cause death within 6 months (or, in the case of a neurodegenerative disease, illness or condition, within 12 months); and
(c) is causing suffering to the person that cannot be relieved in a manner that the person considers tolerable.[90]

In contrast to Victoria, a medical practitioner or nurse practitioner is able to initiate a discussion or suggest voluntary assisted dying to a person so long as they also inform the person, at the same time, about available treatment and palliative care options, and their likely outcomes.[91]

Tasmania

In March 2021 the End-of-Life Choices (Voluntary Assisted Dying) Act 2021 (Tas) was passed by the Tasmanian Parliament. Voluntary assisted dying will commence in Tasmania on a date to be proclaimed, or on 23 October 2022, following an 18-month implementation period.

A person will be eligible if they are suffering intolerably in relation to a disease, illness, injury, or medical condition that:

(a) is advanced, incurable and irreversible;
(b) is expected to cause their death; and

(c) will, unless an exemption is granted, cause death within 6 months (or in the case of a person with a neurodegenerative disease, illness or condition, within 12 months).[92]

A person may apply to the Commission for an exemption from the requirement that death occur within 6 or 12 months.[93] The Commission may grant an exemption if it is satisfied that the person's prognosis is such that this requirement should not apply.[94] In reaching a decision, the Commission will examine the person's medical records, and seek advice from a medical practitioner with specialist knowledge about the person's medical condition.[95]

It will be lawful for a medical practitioner to initiate a conversation about voluntary assisted dying if, at the same time, the medical practitioner also informs the person about the treatment and palliative care options available to the person, and the likely outcomes of those.[96]

South Australia

In June 2021 the Voluntary Assisted Dying Act 2021 (SA) was passed by the South Australian Parliament. Voluntary assisted dying will commence in South Australia on a date to be proclaimed. South Australia Health advises that implementation of voluntary assisted dying is likely to span 18 to 24 months (up to approximately early 2023).

To be eligible a person must have a disease, illness, or medical condition that is:

(a) incurable;
(b) advanced, progressive, and will cause death;
(c) expected to cause their death within 6 months (or in the case of a person with a neurodegenerative disease, illness or condition, within 12 months);
(d) is causing suffering to the person that cannot be relieved in a manner that the person considers tolerable; and
(e) are acting freely and without coercion.[97]

In line with the position in Victoria, it is unlawful for a registered health practitioner to initiate a discussion about voluntary assisted dying with a person, or suggest voluntary assisted dying to them.[98] However, they may provide information about voluntary assisted dying if a person requests it.[99]

Queensland

On 16 September 2021 the Voluntary Assisted Dying Act 2021 (Qld) was passed by the Queensland Parliament. Voluntary assisted dying will commence in Queensland on 1 January 2023, following an implementation period.

To be eligible the person must have a disease, illness, or medical condition that is:

(a) advanced, progressive, and will cause death;
(b) to cause their death within 12 months; and
(c) is causing suffering that the person considers to be intolerable.[100]

Medical practitioners and nurse practitioners may initiate a discussion with a person about voluntary assisted dying if, at the same time, they inform the person about the treatment options and palliative care options available, and the likely outcomes of treatment.[101]

While all states have passed voluntary assisted dying legislation, it is still an offence to aid, abet and counsel someone to commit suicide. The purpose of the voluntary assisted dying legislation is to give competent adults suffering from a terminal or incurable disease the ability to make an informed decision to end their life peacefully by taking medication prescribed by a doctor. The legislation does not change the stance on aiding and abetting of suicide as it is still a punishable criminal offence in all States and Territories.

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Footnotes

1. The Health Practitioner Regulation National Law is applied and modified as a law of NSW by the Health Practitioner Regulation (Adoption of National Law) Act 2009 (NSW).
2. *Health Care Complaints Commission v Godwin* Above, n 2; BC202200660.
3. Above, n 2, [5].
4. Above, n 2, [5].
5. Above, n 2, [6].
6. Above, n 2, [6].
7. Above, n 2, [7], Background sub-para 1.
8. Above, n 2, [7], Background sub-para 2.
9. Above, n 2, [7], sub-para 7.
10. Above, n 2, [7], sub-para 8.

11. Above, n 2, [7], sub-para 8.
12. Above, n 2, [13], Complaint One sub-para (c)–(d).
13. Above, n 2, [13], Complaint One sub-para (e), [20].
14. Above, n 2, [13], Complaint One sub-para (f).
15. Above, n 2, [13], Complaint One sub-para (g).
16. Above, n 2, [13], Complaint One sub-para (h).
17. Above, n 2, [13], Complaint One sub-para (j).
18. Above, n 2, [7], sub-para 10.
19. Above, n 2, [7], sub-para 11.
20. Above, n 2, [7], sub-para 12.
21. Above, n 2, [7], sub-para 12.
22. Above, n 2, [7], sub-para 12.
23. Above, n 2, [7], sub-para 13.
24. Above, n 2, [7], sub-para 14; [25].
25. Above, n 2, [7], sub-para 16.
26. Above, n 2, [7], sub-para 17.
27. Above, n 2, [7], sub-para 17.
28. Above, n 2, [7], sub-para 20.
29. Above, n 2, [13].
30. Health Practitioner Regulation National Law (NSW) Act 2009, s 139B(1)(a).
31. Health Practitioner Regulation National Law (NSW) Act 2009, s 139E(a).
32. Health Practitioner Regulation National Law (NSW) Act 2009, s 139E(b).
33. Above, n 2, [13]–[14].
34. Above, n 2, [25].
35. Above, n 2, [7], [25].
36. Above, n 2, [25].
37. Above, n 2, [25], sub-para 2(a).
38. Above, n 2, [25], sub-para 2(b).
39. Above, n 2, [25], sub-para 2(c).
40. Above, n 2, [25], sub-para 2(d).
41. Above, n 2, [25], sub-para 2(e).
42. Above, n 2, [25], sub-para 2(f)
43. Above, n 2, [30].
44. Above, n 2, [44].
45. Above, n 2, [36], [42], [49]–[51]; contrary to code 3.14, 4.4 and 4.5 of the Code of Conduct.
46. Above, n 2, [43].
47. Above, n 2, [45].
48. Above, n 2, [68].
49. Above, n 2, [72].
50. Above, n 2, [50].
51. Above, n 2, [50].
52. Above, n 2, [67].
53. Above, n 2, [67]; contrary to code 3.14 and 4.5 of the Code of Conduct.
54. Above, n 2, [73].
55. Above, n 2, [78]–[85].
56. Above, n 2, [79], [81], [84], [86].
57. Above, n 2, [87].
58. Health Practitioner Regulation National Law (NSW) Act 2009, s 139E(a).
59. Above, n 2, [88].
60. *Health Care Complaints Commission v Litchfield* (1997) 41 NSWLR 630; BC9703531.
61. *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 at 200; above, n 2, [91].
62. Above, n 2, [90].
63. Above, n 2, [93].
64. Above, n 2, [93].
65. Above, n 2, [93].
66. Above, n 2, [93].
67. Above, n 2, [97].
68. Above, n 2, [96].
69. Above, n 2, [96].
70. Above, n 2, [95].
71. Above, n 2, [102].
72. Above, n 2, [104].
73. Above, n 2, [107].
74. Above, n 2, [109].
75. Above, n 2, [111].
76. Above, n 2, [111].
77. Above, n 2, [111].
78. Above, n 2, [111].
79. Above, n 2, [111].
80. Above, n 2, [93], [113].
81. Above, n 2, [93].
82. Above, n 2,[115].
83. Similar provision in other states and territories: Crimes Act 1958 (Vic) s 6B(2)(b); Criminal Law Consolidation Act 1935 (SA) s 13A(5); Criminal Code Act 1899 (Qld) Sch 1 s 311; Criminal Code Act 1913 (WA) pt V ch XXVIII s 288; Criminal Code Act 1924 (SA) s 163; Criminal Code Act 1983 (NT) s 162(2); Crimes Act 1900 (ACT) s 17.
84. Similar provision in other states and territories: Crimes Act 1958 (Vic) s 3; Criminal Law Consolidation Act 1935 (SA) s 11; Criminal Code Act 1899 (Qld) sch 1 s 305; Criminal Code Act 1913 (WA) pt V ch XXVIII s 279; Criminal Code Act 1924 (SA) s 158; Criminal Code Act 1983 (NT) s 156; Crimes Act 1900 (ACT) s 12.
85. Northern Territory (Self-Government) Act 1978 (NT) s 50A(1)–(2); Australian Capital Territory (Self-Government) Act 1988 (ACT) s 23(1A).
86. Voluntary Assisted Dying Act 2017 (Vic) s 1.
87. Voluntary Assisted Dying Act 2017 (Vic) s 3.
88. Voluntary Assisted Dying Act 2017 (Vic) s 9(1)(d).
89. Voluntary Assisted Dying Act 2017 (Vic) s 8.
90. Voluntary Assisted Dying Act 2019 (WA) s 16(1)(c).
91. Voluntary Assisted Dying Act 2019 (WA) s 10.
92. End-of-Life Choices (Voluntary Assisted Dying) Act 2021 (Tas) s 7.
93. End-of-Life Choices (Voluntary Assisted Dying) Act 2021 (Tas) s 6(3).
94. End-of-Life Choices (Voluntary Assisted Dying) Act 2021 (Tas) s 4.

95. End-of-Life Choices (Voluntary Assisted Dying) Act 2021 (Tas) s 6(5).
96. End-of-Life Choices (Voluntary Assisted Dying) Act 2021 (Tas) s 17(1)–(2).
97. Voluntary Assisted Dying Act 2021 (SA) s 26(1)(d)–(e).
98. Voluntary Assisted Dying Act 2021 (SA) s 12(1).
99. Voluntary Assisted Dying Act 2021 (SA) s 12(2).
100. Voluntary Assisted Dying Act 2021 (Qld) s 10(1)(a).
101. Voluntary Assisted Dying Act 2021 (Qld) s 7(1)–(2).