



New Zealand  
Health Practitioners  
Disciplinary Tribunal

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**Decision No:** 375/Phar11/171P

**IN THE MATTER** of the Health Practitioners  
Competence Assurance Act 2003

**AND**

**IN THE MATTER** of a charge laid by the  
Professional Conduct Committee  
against **SAMUEL ROSS**  
**PULMAN**, of Pukekohe,  
Pharmacist

**BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL**

**HEARING** held in Wellington on 2 May 2011

**TRIBUNAL:** Mr Bruce A Corkill QC (Chairperson)

Ms Dianne Vicary, Ms Angela Hauk-Willis, Dr John Dunlop and  
Mr Daryl Sayer (Members)

Ms G Fraser (Executive Officer)

Ms T Murray (Stenographer)

**APPEARANCES:** Mr M F McClelland and Ms A Hall, for the Professional Conduct  
Committee

Mr R D Butler, for Mr S R Pulman

**Introduction:**

1. Mr Pulman is a pharmacist.
2. On 10 January 2011, a Professional Conduct Committee (PCC) appointed by the Pharmacy Council of New Zealand charged that Mr Pulman had been convicted of a serious charge under the Misuse of Drugs Act 1975, and that the conviction reflected adversely on his fitness to practise, (section 100(1)(c) of the Health Practitioners Competence Assurance Act 2003 (the Act)).
3. Mr Pulman was unavailable to attend, as he is currently serving his term of imprisonment, but he was represented by Counsel and his wife was in attendance also; they were linked to the Tribunal's hearing (in Wellington) by telephone. This was an efficient and cost effective way to conduct the hearing, particularly as there were few issues to resolve.

**The Charge:**

4. The charge stated:

*“TAKE NOTICE that a Professional Conduct Committee (Committee) appointed by the Pharmacy Council of New Zealand pursuant to section 71 of the Health Practitioners Competence Assurance Act 2003 (Act) has determined in accordance with section 80(3)(b) of the Act that the conviction of Mr Samuel Pulman, registered pharmacist, referred to the Committee pursuant to section 68(2) of the Act, should be considered by the Health Practitioners Disciplinary Tribunal (Tribunal). The Committee has reason to believe that grounds exist entitling the Tribunal to exercise its powers under section 100(1)(c) of the Act.*

**Charge**

1. *On 18 May 2009, Mr Pulman was convicted in the High Court at Auckland of an offence pursuant to section 6(1)(b) of the Misuse of Drugs Act 1975, being an offence punishable by life imprisonment, in that between 1 January 2005 and 4 December 2007 in the North Island of New Zealand, together with other persons he manufactured a Class A controlled drug, methamphetamine.*

*The Committee, pursuant to sections 81(2) and 91 of the Act, charges that the conviction reflects adversely on Mr Pulman's fitness to practise pursuant to section 100(1)(c) of the Act.”*

## Agreed Summary of Facts:

5. The charge was able to be determined on the basis of an agreed summary of facts. It reads:

### *1 Introduction*

- 1.1 *Samuel Ross Pulman is a registered pharmacist. At all material times, Mr Pulman was employed as a pharmacist at Pukekohe Pharmacy 2005 Limited trading as Unichem Pukekohe Pharmacy, Pukekohe ('the Pharmacy').*
- 1.2 *On 18 May 2009, Mr Pulman was convicted in the Auckland High Court on a charge of manufacturing Methamphetamine, a Class A drug, between 1 January 2005 and 4 December 2007 pursuant to section 6(1)(b) of the Misuse of Drugs Act 1975.*
- 1.3 *Mr Pulman was sentenced to five years and eight months imprisonment and is currently in prison.*

### *2 Background*

#### *The Pharmacy*

- 2.1 *The Pharmacy is currently owned by Daniel Adams, Neeten Bhikha, Paul Borich, and Kerry Oxenham. The Pharmacy's opening hours were 8 am to 8 pm, Monday to Sunday.*
- 2.2 *The Pharmacy policy in relation to the sale of over the counter medicines containing pseudoephedrine was that only one packet or bottle of this medicine was to be supplied per customer. Unless personally known to the pharmacist, customers purchasing products containing pseudoephedrine were required to provide photographic identification. The customers' details were to be entered into the Controlled Drugs Register as required by regulation 37 of the Misuse of Drugs Regulations 1977, which if requested was to be provided to the Police.*
- 2.3 *All staff at the Pharmacy were advised of, and required to adhere to the Pharmacy policy in relation to such products.*

#### *Pseudoephedrine and Methamphetamine*

- 2.4 *Pseudoephedrine is classified as a Part 5, Class C controlled drug pursuant to the Misuse of Drugs Act 1975 unless the exception applies as set out in clause 6, Part 3, Schedule 3 of the Misuse of Drugs Act. In this case, the exception does not apply.*
- 2.5 *Pseudoephedrine is the primary precursor substance used in the manufacture of Methamphetamine, which is classified as a Class A controlled drug under the Misuse of Drugs Act 1975. Pseudoephedrine is found in a large number of cold and flu remedies including Actifed, Codral, Sudafed, Nurofen Cold and Flu, and Coldrex.*

*Police investigation*

- 2.6 *In early October 2007, the Police received information that Mr Pulman was supplying large quantities of pseudoephedrine based products to customers.*
- 2.7 *As a result of that information, the Police commenced covert surveillance at the Pharmacy on 12 October 2007. This surveillance included observations carried out by the Police.*
- 2.8 *On 31 October 2007, covert cameras were installed in the Pharmacy by the Police.*
- 2.9 *The Police investigation and video footage from the cameras installed in the Pharmacy showed that from 31 October 2007 to 4 December 2007 (**'the Surveillance Period'**), Mr Pulman would open the Pharmacy between the hours of 6:15 am and 7:15 am. During this time, Mr Pulman was the sole employee working in the Pharmacy. Customers would enter the Pharmacy and Mr Pulman was filmed selling pseudoephedrine based products to more than 30 different customers, for example Nurofen and [Codral]. While some customers would have purchased for legitimate medical reasons, some of the customers did not.*
- 2.10 *In particular, the video footage showed those customers enter the Pharmacy and engage in a brief conversation with Mr Pulman. Mr Pulman would then supply at least one packet and sometimes numerous packets of pseudoephedrine based medicines of various brands, put these into a bag and be paid cash.*
- 2.11 *Mr Pulman was recorded placing the money received in exchange for the pseudoephedrine based products into a small white cardboard box which was kept in a locked side room beside the cash register in the Pharmacy. Mr Pulman was not recorded providing change to these customers' and very seldom was Mr Pulman recorded entering the customer's details into a Controlled Drugs Register.*
- 2.12 *The retail price for [Nurofen] 48s at that time was around \$30 per packet. However, Mr Pulman routinely received \$100.00 per packet.*
- 2.13 *On 4 December 2007, at the conclusion of the Surveillance Period, the Police interviewed Mr Pulman. Mr Pulman acknowledged that he was aware that the pseudoephedrine based products he was selling were being used to manufacture Methamphetamine.*
- 2.14 *Between 2005 and 2007, Mr Pulman sold approximately 1,290 boxes of tablets containing pseudoephedrine. The estimated number of tablets would be between 30,960 to 61,920 depending on whether packs of 24s or 48s were sold.*
- 2.15 *There is no evidence that Mr Pulman derived financial benefit from the transactions.*

*Previous Police warning*

2.16 *On 26 August 2005, prior to the Surveillance Period, the Pukekohe Community Constable, Senior Constable Noel Surrey, had conducted training with the Pharmacy's employees which included dealing with and identifying all pseudoephedrine 'pill shoppers' and reiterating that pseudoephedrine is a main ingredient in the manufacture of Methamphetamine.*

*3 Mr Pulman's conviction and subsequent events*

3.1 *On 18 May 2009, Mr Pulman pleaded guilty and was convicted in the Auckland High Court of manufacturing Methamphetamine together with other persons between 1 January 2005 and 4 December 2007 under section 6(1)(b) of the Misuse of Drugs Act 1975.*

3.2 *On 27 August 2010, Mr Pulman was sentenced to a term of imprisonment of five years and eight months.*

*I, Samuel Ross Pulman, registered pharmacist of Pukekohe hereby admit the facts as set out in the agreed statement of facts, admit the particulars of the disciplinary charge that has been brought against me, and admit the conduct as described in the agreed statement of facts, and that the conviction reflects adversely on my fitness to practise. That is why I resigned from practice.”*

**Conviction:**

6. On the evidence before the Tribunal, there is no doubt that a conviction under the Misuse of Drugs Act was entered by the High Court on 18 May 2009, as indicated in the summary of facts.

**Conduct reflects adversely on fitness to practise:**

7. Cases which are of assistance on the second limb of section 100(c) of the Act are as follows:

7.1. *Re Zauka*<sup>1</sup> - there the Medical Practitioners Disciplinary Tribunal stated:

*“... the conduct will need to be of a kind that is consistent with what might be expected from a practitioner who acts in compliance with the standards normally observed by those who are fit to practise medicine.”*

The Tribunal went on to recognise that it is a matter of degree whether a divergence from accepted standards would reflect adversely on a practitioner's

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<sup>1</sup> Decision 03/103C.

fitness to practise.

7.2. *Professional Conduct Committee v Martin*<sup>2</sup> - there the Court stated:

*“Fitness” often may mean something different to competence ... Aspects of general deterrence as well a specific deterrence remain relevant. So, too, is the broader consideration of the public or community’s confidence and the upholding of the standards of the ... profession.”*

7.3. *Chiew*<sup>3</sup> - the Tribunal’s approach to considering convictions of practitioners is that fitness to practise is more than a practitioner’s clinical and technical competence, but also has an ethical component.

7.4. Another helpful decision, is *Pitwood*<sup>4</sup> where there is a careful review of the second limb, which the Tribunal also adopts.

8. The PCC submitted, in summary:

8.1. The nature and gravity of the conduct justifies a finding that the convictions reflected on fitness to practise; it demonstrated a clear departure from professional and ethical standards which the public and profession expect practitioners to observe.

8.2. The offending arose primarily from Mr Pulman’s role as a pharmacist.

8.3. The conviction under section 6(1)(b) of the Misuse of Drugs Act is sufficient to conclude that the conduct reflects adversely on fitness to practise; ie, it is a very serious charge.

8.4. Mr Pulman’s actions were deliberate and repetitive. He was in a position of trust and was expected to uphold the integrity of the profession.

8.5. This conduct must be condemned to ensure that professional standards are maintained.

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<sup>2</sup> Gendall J High Court Wellington, CIV-2006-485-1461, 27 February 2007.

<sup>3</sup> 180/Phar08/95P.

<sup>4</sup> 84/Ost06/42B.

9. Counsel for Mr Pulman stated he did not need to be heard on this aspect of the matter, since Mr Pulman conceded that the elements of the charge were made out.
10. The Tribunal considered these submissions and it retired to consider these submissions. It was satisfied not only that the conviction was properly proved, but that it reflected adversely on Mr Pulman's fitness to practise. In summary this is because:
  - 10.1. The High Court on sentencing referred to the following matters, which the Tribunal regards as relevant for present purposes:
    - 10.1.1. The quantities of pseudoephedrine-based drugs supplied were very substantial indeed.
    - 10.1.2. Mr Pulman knew that the pseudoephedrine was going to be used in the manufacture of methamphetamine.
    - 10.1.3. The methamphetamine to which he was party to manufacturing would have caused significant harm to individuals and much suffering in the community, since the drug is highly addictive, and has entrapped many people from all sectors of the community; the detrimental effects are well known, including aggression, psychotic behaviour, anxiety and paranoia. Moreover the manufacture and distribution of methamphetamine is linked to organised criminal offending. Methamphetamine related offending is a key driver in very many criminal cases. Mr Pulman must be aware of all of this.
  - 10.2. There were thus significant breaches of the Code of Ethics, which contains the ethical standards for the profession. Examples of the provisions of the Code of Ethics which were breached by this conduct are:
    - 10.2.1. In respect of Principle 3, non-maleficence – the pharmacist shall act to prevent harm to the patient and the public; the specific obligations

relevant to this case are in clauses 3.4 and 3.15, safe use of medicines, and inappropriate supply of medicines likely to constitute a hazard to health and/or supply of unnecessary or excessive quantities of these, particularly those which the pharmacist knows are likely to cause or have a potential for misuse, abuse or dependency. In respect of Principle 4 – the pharmacist shall practise fairly and justly and promote family, whanau and community health; the specific obligation relevant to this case is in Principle 4.4, commercial interests not to override good practice. In respect of Principle 6, integrity – the pharmacist shall practise in a manner that does not compromise their own professional independence, judgment or integrity, or that of other pharmacists; the specific obligation in respect of this case is in Principle 6.5, which is that the pharmacist must accept responsibility for his professional activities. In respect of Principle 7, trustworthiness – the pharmacist shall act in a manner that promotes public trust in the knowledge and ability of pharmacists and enhances the reputation of the profession; the specific obligations in respect of this care are in 7.1, behaviour and 7.7, the pharmacist must not sell a product which may be detrimental to the good standing of the profession or bring the profession into disrepute.

- 10.2.2. In short, not only were there very serious legal breaches in respect of section 6(1)(b) of the Misuse of Drugs Act, but there were also very significant ethical breaches in respect of the Code of Ethics.
- 10.2.3. As the PCC emphasised Mr Pulman's actions were deliberate and repetitive, and breached his position of trust. The supply of pseudoephedrine based products to customers when he knew they

were not being used for their intended purpose is completely unacceptable.

11. For all these reasons, the Tribunal was satisfied that the charge was established; and this was announced at the hearing.

**Penalty:**

12. The PCC submitted, as to penalty:
  - 12.1. That it was appropriate that there be an order of cancellation, censure, costs, and publication of the Tribunal's decision.
  - 12.2. The conduct displayed a complete disregard of obligations to the public and the profession.
  - 12.3. The offending was premeditated and took place over a period of two years; emphasis was placed on the secretive way in which the conduct occurred, namely between 6.15am and 7.15am before the pharmacy was open. The Court had emphasised that this behaviour was "very serious".
  - 12.4. It was clear Mr Pulman knew the pseudoephedrine based products were for use in the manufacture of methamphetamine when he sold to customers. It was emphasised that public health and safety were thus compromised by Mr Pulman's offending, as the High Court recognised. This had the potential to cause significant harm to individuals, and much suffering in the community.
  - 12.5. The amounts involved were very substantial. The estimated number of tablets was between 30,960 to 61,920 depending on whether packs of 24s or 48s were sold.
  - 12.6. This was an abuse of Mr Pulman's position as a pharmacist.
  - 12.7. It was emphasised that this conduct involved significant breaches of relevant obligations under the Code of Ethics (as already discussed).

- 12.8. Reference was made to two precedents - *Cullen*<sup>5</sup> and *Farquhar*<sup>6</sup>; these were cases where significant abuse in the supply/administration of drugs was undertaken, and orders of cancellation were made.
13. Counsel for Mr Pulman submitted, in summary:
- 13.1. It was not disputed that a cancellation order was appropriate; the central thrust of Mr Pulman's submission related to the request for an order of costs (referred to below).
- 13.2. Mitigating features were:
- 13.2.1. Mr Pulman had accepted responsibility at the earliest point in time.
- 13.2.2. Mr Pulman had made a significant contribution to the community, as was remarked on by the High Court Judge in sentencing. The sentencing notes recorded that Mr Pulman is a 70 year old man with a wife, three children and six grandchildren. The notes record his "extensive community involvement" including membership of community organisations.
- 13.2.3. The High Court concluded that he had been "a pillar of [his] community".
- 13.2.4. It was submitted these were significant mitigation factors which could be considered, at least with regard to the topic of costs.
- 13.2.5. Finally, Mr Pulman proffered an apology, including to the health and pharmaceutical profession. He stated he always had a deep regard for the ethics of the profession and had constantly maintained these throughout his career.

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<sup>5</sup> 139/Med06/44P.

<sup>6</sup> 57/Nur05/26P.

### Penalty Principles:

14. In determining the appropriate penalties, the Tribunal recognised the following functions of disciplinary proceedings:
- 14.1. Protecting the public – this object is reinforced by section 3 of the HPCA Act;
- 14.2. to maintain professional standards – this object is emphasised in *Taylor v General Medical Council* [1990] 2 All ER 263; *Ziderman v General Dental Council* [1976] 2 All ER 344 and *Dentice v The Valuers Registration Board* [1992] 1 NZLR 720;
- 14.3. to punish the practitioner in question, as referred to in *Dentice v The Valuers Registration Board* and *Patel v Complaints Assessment Committee* (CIV-2007-404-1818, 13 August 2007, Lang J);
- 14.4. where appropriate, to rehabilitate the practitioner, as referred to in *J v Director of Proceedings* (CIV-2006-404-2188, 17 October 2006, Baragwanath J), and *Patel* (supra).
15. The Tribunal is required to balance relevant aggravating and mitigating factors, in fixing a reasonable and proportionate penalty.
16. In *A v PCC* (5 September 2008, Keane J, CIV-2008-404-2927), the Court discussed carefully, the range of sanctions available to the Tribunal, particularly cancellation and suspension.<sup>7</sup> The Court stated that four points could expressly be derived from the authorities, and implicitly a fifth:

“[81] *First, the primary purpose of cancelling or suspending registration is to protect the public, but that “inevitably imports some punitive element”. Secondly, to cancel is more punitive than to suspend and the choice between the two terms on what is proportionate. Thirdly, to suspend implies the conclusion that cancellation would have been disproportionate. Fourthly, suspension is most apt where there is “some condition affecting the practitioner’s fitness to practise which may or may not be amenable to cure”. Fifthly, and perhaps only implicitly, suspension ought not to be imposed simply to punish.*

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<sup>7</sup> Paras 77-82.

[82] Finally, the Tribunal cannot ignore the rehabilitation of the practitioner: *B v B* (HC Auckland, HC4/92, 6 April 1993) Blanchard J. Moreover, as was said in *Giele the General Medical Council* [2005] EWHC 2143, though "... the maintenance of public confidence ... must outweigh the interest of the individual doctor", that is not absolute – "the existence of the public interest in not ending the career of a competent doctor will play a part".

17. In numerous cases, the need to consider and explain why lesser options have not been adopted is emphasised. But the Tribunal has to proceed on the basis of what is appropriate having regard to the public interest, and the need to maintain public confidence in the profession.<sup>8</sup> Randerson J put the matter in this way:

"[30] The consequences of removal from a professional register are ordinarily severe and the task of the Tribunal is to balance the nature and gravity of the offences and their bearing on the dentist's fitness to practise against the need for removal and its consequences to the individual: *Dad v General Dental Council* [2002] 1 WLR 1538. As the Privy Council further observed at 1543:

*Such consequences can properly be regarded as inevitable where the nature or gravity of the offence indicates that a dentist is unfit to practise, that rehabilitation is unlikely and that he must be suspended or have his name erased from the register. In cases of that kind greater weight must be given to the public interest and to the need to maintain public confidence in the profession than to the consequences of the imposition of the penalty to the individual.*

[31] *I respectfully adopt the observations of the Privy Counsel and would add that it is incumbent on the Tribunal to consider carefully the alternatives available to it short of removal and to explain why the lesser options have not been adopted in the circumstances of the case. As well, while absolute consistency is something of a pipe dream, and cases are necessarily fact dependent, some regard must be had to maintaining reasonable consistency with other cases. That is necessary to maintain the credibility of the Tribunal as well as the confidence of the profession and the public at large.*"<sup>9</sup>

Section 101(2) of the Act stipulates that when dealing with a convictions case, the Tribunal must not impose a fine.

<sup>8</sup> *Patel*, supra, para 30 per Lang J; *L v The Director of Proceedings*, Woodhouse J, 25 March 2009, CIV-2008-404-2268 [47-48].

<sup>9</sup> *Patel v The Dentists Disciplinary Tribunal* HC AK AP77/02, 8 October 2002.

**Penalty Discussion:**

18. The Tribunal has no doubt that the only possible order it can make in the present circumstances, is cancellation of registration. To test that proposition, the Tribunal considered whether suspension was appropriate. When a practitioner is suspended, that person is entitled to resume practice at the conclusion of the period of suspension. Here, it is not in the interests of the public for that to occur; in the language of the Court in *A v PCC*, the Tribunal cannot conclude that the practitioner is “amenable to cure”.
19. Accordingly, the Tribunal is obliged to order cancellation of his registration.
20. Secondly, an order of censure is appropriate. The Tribunal must make it clear that conduct of this kind is completely unacceptable; that is a message which is directed not only to Mr Pulman, but also to the profession at large. Practitioners must be aware that serious misconduct of this kind will result in a strong response from the Tribunal.

**Costs:**

21. The PCC made an application for costs. These were:
- 21.1. PCC: \$14,800.00 (approximately) exclusive of GST.
- 21.2. Tribunal: \$13,186.00 (approximately), exclusive of GST.
22. The PCC submitted, in summary:
- 22.1. The starting point in determining the amount of costs payable by Mr Pulman should be 50% of the total cost of the investigation: *Cooray v Preliminary Proceedings Committee*.<sup>10</sup>
- 22.2. While the decision of *L v Professional Conduct Committee of New Zealand Psychologists Board*<sup>11</sup> confirmed that it is appropriate for credit to be given to

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<sup>10</sup> Doogue J High Court Wellington, AP23/97, 14 September 1994.

<sup>11</sup> Andrews J High Court Auckland, CIV-2009-404-000998, 17 September 2009.

a practitioner for pleading guilty at an early stage, this did not alter the starting point of 50%.

22.3. The justification for the award of costs lies in the unfairness of requiring the profession as a whole to bear the full costs of professional disciplinary proceedings: *Vasan v Medical Council of New Zealand*.<sup>12</sup>

23. Counsel for Mr Pulman submitted in summary:

23.1. The Tribunal could, on the facts of this case, refrain from ordering payment of costs.

23.2. First, this was having regard to Mr Pulman's conduct in relation to the proceeding, which was said to be exemplary. He had accepted responsibility from the outset and had done everything possible to minimise all costs. This was reflected in the efficient way in which the hearing was able to be conducted.

23.3. Reference was then made to Mr Pulman's financial position, and a brief summary of assets and liabilities was submitted in that regard. It was indicated that Mr Pulman would not be eligible for parole until at least June 2012, and there were no guarantees he would be able then to return to any sort of employment.

23.4. It was submitted that the impost of an award for costs was likely to fall on Mr Pulman's wife and family, and that unless they paid those costs, there could be a risk of bankruptcy.

23.5. It was also submitted that the mitigating factors which have been set out above, could also be considered.

23.6. In oral submissions, Counsel for Mr Pulman submitted that, having regard to

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<sup>12</sup> Eichelbaum CJ, Jeffries J and Greig J, 18 December 1991, AP43/91, at p15.

previous cases, the correct percentage would be 25%.

24. The Tribunal retired to consider this issue, and concluded provisionally that having regard to its usual practice in respect of cases of this kind, the facts of the case and the way the hearing had been conducted, the appropriate percentage was 33% of the costs incurred.
25. The Tribunal then reconvened and Counsel for Mr Pulman indicated, having taken instructions, that he would not need to be heard further on quantum, in light of the provisional indication given by the Tribunal. Accordingly, the Tribunal determined that a fair figure for a costs award, taking into account the significant co-operation and other efficiencies, was 33%. That is: \$4,650.00 in respect of the Tribunal's costs, and \$4,650.00 in respect of the PCC's costs, a total of \$9,300.00; these figures are exclusive of GST which is not payable.

**Conclusion:**

26. The Tribunal determined that the conviction which is the subject of the charge reflects adversely on the practitioner's fitness to practise.
27. The penalties imposed by the Tribunal are:
  - 27.1. Mr Pulman's registration is cancelled.
  - 27.2. Mr Pulman is censured: the Tribunal must send a very strong message to the practitioner and to the profession at large that conduct of this kind is simply unacceptable, and will be dealt with firmly.
  - 27.3. Mr Pulman is to pay costs as follows:
    - 27.3.1. The sum of \$4,650.00 in respect of the Tribunal's costs and expenses.
    - 27.3.2. The sum of \$4,650.00 in respect of the costs and expenses of the PCC.
    - 27.3.3. These sums do not include GST which is not payable.
  - 27.4. The Tribunal directs that a summary of the case and a copy of the decision is to

be placed on the Tribunal's website. It also directs that a notice stating the effect of the Tribunal's decision, together with a link to a copy of the decision on the Tribunal's website, is to be placed in the Pharmacy Council newsletter, "The Edge", "Pharmacy Today" and the Pharmacy Guilds' website.

**DATED** at Wellington this 11<sup>th</sup> day of May 2011

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B A Corkill QC  
Chairperson  
Health Practitioners Disciplinary Tribunal