



# Off-field Behaviour - a Lawyer's thoughts

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# Structure of presentation

1.) Response to Tony's presentation;

- Guard dogs and guide dogs
- Reflection on the gaining of wisdom, and the obligations that come with it

2.) The densest part of the paper; the Butcher of Bega, and the legislative changes that followed media coverage of his work

What is "the public interest"?

3.) Dr Crickitt and Dr Pridgeon

4.) What is a good doctor, the importance of tone, and kayaking on Sydney Harbour

# NSW's Co-Regulatory System



Guard dog



Guide dog

Section 139B(1)(a) of the National Law;  
“unsatisfactory professional conduct” includes;

- *“Conduct that demonstrates the knowledge, skill or judgment 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**”.*

Did Cate win?



# No



# Medical Practice Act, section 66(1) prior to 2008;

## **Suspension or conditions to protect the public**

(1) The Board must, if at any time it is satisfied that such action **is necessary** for the purpose of protecting the life or physical or mental health of any person:

(a) by order suspend a registered medical practitioner from practising medicine for such period (**not exceeding 8 weeks**) as is specified in the order, or

(b) impose on a registered medical practitioner's registration such conditions, relating to the practitioner's practising medicine, as it considers appropriate.

# Medical Practice Act, section 66(1) after amendments

(1) The Board must, if at any time it is satisfied that it is **appropriate** to do so for the protection of the health or safety of any person or persons (whether or not a particular person or persons) **or if satisfied that the action is otherwise in the public interest:**

(a) by order, suspend a registered medical practitioner from practising medicine for such period (not exceeding 8 weeks) as is specified in the order, or

(b) impose on a registered medical practitioner's registration such conditions relating to the practitioner's practising medicine as the Board considers appropriate.



# Section 2A of the Medical Practice Act as amended;

## 2A Object and principle of administration of Act

- (1) The object of this Act is to protect the health and safety of the public.
- (2) The object of this Act is achieved by providing mechanisms designed to ensure that:
  - (a) medical practitioners are fit to practise medicine, and
  - (b) medical students are fit to undertake medical studies and clinical placements.
- (3) In the exercise of functions under this Act the protection of the health and safety of the public is to be the paramount consideration.**

# “The public interest”?

*“...the public interest includes indirectly, the standing of the medical profession and the maintenance of public confidence in the high standard of practitioners. There is also an element of deterrence or, to put it more positively, encouragement to other practitioners to recognise the importance of complying with professional standards and the risks of failing to do so.”*

Prakash v HCCC [2006] NSWCA 153 at [91], (says Justice Basten)

## A more recent statement under the NL

*“includes considerations of maintaining confidence of maintaining public confidence in the scheme for regulating health practitioners...and that practitioners will exhibit traits consistent with the honourable practice of an honourable profession”, and that it covers “wider community interests such as the standards to which human conduct is to be held”*

*Pharmacy Council of NSW v Ibrahim [2020] NSWSC 708 at [32] and [35].*

# Dr Crickitt (Who?)



# The Medical Council v the Tribunal approach

While they had “no immediate concerns” that Dr Crickitt’s practice of medicine posed a clinical risk to the health and safety of the public:

*“...the seriousness of the allegations and the potential for the reputation of and trust in the medical profession to be damaged provide cogent reasons for taking action in the public interest, at least while the criminal proceedings are pending.”*

“In the context of these proceedings, all patients of the appellant are vulnerable to the misconduct exhibited by the appellant in the treatment of his wife. He exhibited incompetency in diagnosis and in treatment of a complex mental health condition over a long period of time, and a failure to record and keep proper clinical notes. As such we have grave concerns for his safe and appropriate practice of medicine, and the impact on the safety of his patients or persons who may become his patients.”



Al Capone

# Dr Pidgeon



Tone is (almost) everything with interim hearings

