Problem Doctors in Disciplinary Tribunals:

Who Do Protective Orders Protect?

An Analysis of Australian Tribunal Decisions from

2010 – 2013

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2016

Certificate of original authorship

I certify that the work in this thesis has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree except as fully acknowledged within the text.

I also certify that the thesis has been written by me. Any help that I have received in my research work and the preparation of the thesis itself has been acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

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Date: 9 March 2016

Acknowledgements

My thanks to my supervisors, Isabel Karpin and Anita Stuhmcke, for their encouragement, support and valuable feedback. They challenged my assumptions and kept me focussed.

I also thank my fellow postgraduate students at UTS who were always incredibly generous in sharing information and advice, and whose wisdom and sense of humour made the whole journey much more enjoyable.

I thank my family and my friends for their never-ending kindness, tolerance and support.

Last, but never least, I thank my partner Tim for his unfailing patience, his encouragement and his staying power. It meant everything.

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Abstract

This thesis questions whether the approach to 'problem' doctors adopted by medical disciplinary tribunals in Australia undermines a key objective of the Health Practitioner Regulation National Law, namely, the protection of the public. The thesis analyses medical tribunal decisions in Australia from 1 July 2010 to 1 July 2013, with a particular focus on 'impaired' doctors. It argues that the concept of the protection of the public has been undermined by protective orders (also known as disciplinary sanctions), which focus on the rehabilitation of problem and impaired doctors in the management of risk, rather than more severe protective orders, such as suspension or deregistration. The tribunal decisions create a rich database for a nuanced examination of the way in which the culture of 'the therapeutic state' has permeated disciplinary decision-making in relation to protective orders, under both the old State and Territory laws and the current Health Practitioner Regulation National Law. This culture medicalises professional misconduct that may attract negative moral judgment, and redefines it in terms of illness, in particular, psychiatric illness. The thesis critically assesses how tribunals struggle to distinguish between misconduct as a function of illness or impairment, and other misconduct, and identifies the key role played by psychiatrists in this process. The findings indicate that the most common form of risk management in medical tribunals was the use of protective orders to impose conditions upon a doctor's registration, such as supervision of a doctor's practice, psychiatric treatment, drug testing or the use of a chaperone. It is argued that in view of the paucity of research on the rationale and utility of such protective orders, tribunals show too much trust in their effectiveness. The thesis concludes that the pendulum has swung too far towards the rehabilitation of doctors at the cost of protection of the public.