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# Complementary health issues

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## DEATH BY HOMŒOPATHY: ISSUES FOR CIVIL, CRIMINAL AND CORONIAL LAW AND FOR HEALTH SERVICE POLICY

*Homœopathy has a significant clinical history, tracing its roots back to Hippocrates and more latterly to Dr Christian (Samuel) Hahnemann (1755-1843), a Saxon physician. In the last 30 years it has ridden a wave of resurgent interest and practice associated with disillusionment with orthodox medicine and the emergence of complementary therapies. However, recent years have seen a series of meta-analyses that have suggested that the therapeutic claims of homœopathy lack scientific justification. A 2010 report of the Science and Technology Committee of the United Kingdom House of Commons recommended that it cease to be a beneficiary of NHS funding because of its lack of scientific credibility. In Australia the National Health and Medical Research Council is expected to publish a statement on the ethics of health practitioners' use of homœopathy in 2013. In India, England, New South Wales and Western Australia civil, criminal and coronial decisions have reached deeply troubling conclusions about homœopaths and the risk that they pose for counter-therapeutic outcomes, including the causing of deaths. The legal decisions, in conjunction with the recent analyses of homœopathy's claims, are such as to raise confronting health care and legal issues relating to matters as diverse as consumer protection and criminal liability. They suggest that the profession is not suitable for formal registration and regulation lest such a status lend to it a legitimacy that it does not warrant.*

The homœopath does not reject modern medical discoveries. He claims the success of modern serum-therapy as a corroboration of the central theory of his school.

*Sydney Homœopathic Hospital v Turner* (1959) 102 CLR 188 at 213  
[1959] HCA 19 at [10] (Fullagar J).

Homeopathy has a significant role to play in the community, as a complement to conventional medicine, for a range of conditions.

*R v Sam (No 18)* [2009] NSWSC 1003 at [158] (Johnson J).

## INTRODUCTION

Homœopathy<sup>1</sup> is currently benefitting from disillusionment with Western medicine.<sup>2</sup> In many Western

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<sup>1</sup>For the spelling of homœopathy, see Armstrong B, *Homœopathy/Homeopathy: The Spelling*, [http://www.historyofhomeopathy.com.au/index.php?option=com\\_flexicontent&view=items&id=387:homopathy-homeopathy-the-spelling](http://www.historyofhomeopathy.com.au/index.php?option=com_flexicontent&view=items&id=387:homopathy-homeopathy-the-spelling) viewed 26 December 2011. In April 2001 the Australian Homœopathic Association held a national referendum of its membership regarding the preferred spelling by the Association, and the use of the word in all of its documentation and publications. The result of the vote was that the "œo" spelling should be retained.

<sup>2</sup>See the address by His Royal Highness The Prince of Wales to the 59th World Health Assembly, Geneva, 26 May 2006, [http://www.apps.who.int/gb/ebwha/pdf\\_files/WHA59/A59\\_DIV7-en.pdf](http://www.apps.who.int/gb/ebwha/pdf_files/WHA59/A59_DIV7-en.pdf) viewed 12 January 2012: "In every treatment, the human attributes of compassion, empathy, touch and rapport are as vital to the art of medicine and healing as they are to the essence of humanity. An integrated approach gives each individual the means and hope of contributing to his or her own healing. Integrated practitioners provide time, empathy, hope and reassurance – the so-called 'human effect' – which can produce major changes in the immune system. These changes can be demonstrated using brain scans, and provide scientific



countries there are signs of a major resurgence in its practice and its influence.<sup>3</sup> The numbers of its practitioners have increased significantly during the past two decades in many countries. It remains a mainstream form of health care in countries such as India.<sup>4</sup> In the United Kingdom and New Zealand it receives ongoing patronage from the Royal Family.

However, while homœopathy as a health discipline traces its modern origins to the late 18th century, it has been controversial from its outset<sup>5</sup> and, if anything, is becoming more highly contested.<sup>6</sup> As recently as 2010 the British Medical Association denounced it as “witchcraft” and called for it to be delisted from entitlement to receive government benefits.<sup>7</sup> In Western countries, homœopathy is coming under sustained attack by conventional medicine and is being accused of failing to establish its claims of therapeutic efficacy by reference to scientific measures of reliability, including double blind controlled trials and meta-analyses. Critics identify in homœopathy risks of delay in, or abandonment of, orthodox treatment which might effect a cure or provide remediation; wasted resources; and the nocebo effect brought about by toxicity.<sup>8</sup> To these can be added the betrayal of hope and financial exploitation.<sup>9</sup>

The growing opposition to homœopathy by the medical establishment has had legal manifestations. For instance, in 1996 the Congress of the Czech Medical Society resolved to amend its internal rules by adding a rule to provide that its members could only use diagnostic, preventive or curative methods based on currently recognised scientific evidence in relation to both their characteristics and their effects. The Congress also made a recommendation to the executive board of the Medical Society that the Homeopathic Association be expelled from its membership on the ground that it did not satisfy the new rule. Members of the Homeopathic Association took legal action claiming damages for damage to its reputation and arguing that the decision had been arbitrary, unlawful and subjective, as it had been taken without the benefit of expert professional or scientific advice and was liable to cause unjustified discrimination against certain healing methods. The Association members lost before the Prague Municipal Court, the Prague City Court on appeal, and the Czech Constitutional Court. However, ultimately (in *Beles v Czech Republic* [2002] ECHR 729)

clues as to how beliefs and emotions can influence our physical health and sense of well-being. The ‘human effect’ can, therefore, play a demonstrably significant role in the whole approach to healing.” His attitudes toward alternative medicine have not been without their critics, though: see eg Weissmann G, “Homeopathy: Holmes, Hogwarts and the Prince of Wales” (2006) 20 *Journal of the Federation of American Societies for Experimental Biology* 1755, <http://www.fasebj.org/content/20/11/1755.full> viewed 12 January 2012.,

<sup>3</sup> See McLean L, *The Revival of Homeopathy and its Demolishment by the Media* (28 August 2005), <http://www.naturalmatters.net/article.asp?article=317&cat=85>; Masiello DR, *History of Homeopathy*, <http://www.drmasiello.com/homeopathy/history-of-homeopathy> viewed 29 December 2011.

<sup>4</sup> See Prasad R, “Homœopathy Booming in India” (2007) 370 *The Lancet* 1679.

<sup>5</sup> See eg Holmes OW, *Currents and Counter-currents in Medical Science: With Other Addresses and Essays* (Ticknor & Fields, Boston, 1861); Clapp D, *Homœopathy: Its Testimony Against Itself* (D Clapp, Boston, 1857); Ullman D, *Discovering Homeopathy: Medicine for the Twenty First Century* (2nd ed, North Atlantic Books, Berkeley, 1993) (foreword by Dr Davey, Physician to Queen Elizabeth II).

<sup>6</sup> Shang A et al, “Are the Clinical Effects of Homœopathy Placebo Effects? Comparative Study of Placebo-controlled Trials of Homœopathy and Allopathy” (2005) 336 *The Lancet* 726. See, however, for a criticism of the methodology of the Shang study: Fisher P et al, “Are the Clinical Effects of Homœopathy Placebo Effects?” (2005) 366 *The Lancet* 2082. Sceptics are in the midst of a worldwide campaign against homœopathy: see *Homeopathy: There's Nothing in It*, <http://www.1023.org.uk> viewed 1 January 2012; Holt S et al, “Call for Doctors Not to Practice Homeopathy or Refer to Homeopaths” (15 April 2011) 124 *NZMJ*, <http://www.journal.nzma.org.nz/journal/124-1332/4621/content.pdf> viewed 9 January 2012. For an example of an answer to the attacks see MacFarlane A, “The Lancet Debate – The Failure of Meta-Analysis as a Research Method in Homeopathy” (2005) 17(2) *Similia* 42.

<sup>7</sup> Donnelly L, “Homeopathy is Witchcraft. Say Doctors”, *The Telegraph* (15 May 2010), <http://www.telegraph.co.uk/health/alternativemedicine/7728281/Homeopathy-is-witchcraft-say-doctors.html> viewed 29 December 2011.

<sup>8</sup> See eg Barrett S, *Quackwatch*, <http://www.quackwatch.com> viewed 26 December 2011.

<sup>9</sup> Oliver Wendell Holmes in 1892 argued that homœopathy was “lucrative, and so long as it continues to be will surely survive, – as surely as astrology, palmistry and other methods of getting a living out of the weakness and credulity of mankind and womankind”: Holmes OW, Preface to “Homeopathy and its Kindred Delusions”, *Medical Essays*, Vol X, *The Standard Edition of the Works of Oliver Wendell Holmes* (Houghton Mifflin, Boston, 1892) p xiii.



the European Court of Human Rights ruled in favour of the Association members, finding there had been a technical constitutional infraction but it declined to award any damages. Nonetheless, the steps taken by the Czech Medical Society are an example of the harder line being taken in many countries against therapies identified by Western doctors' associations as unscientific and dangerous.<sup>10</sup>

A leading, albeit controversial, meta-analysis published in *The Lancet* found insufficient evidence that homeopathy "is clearly efficacious for any single clinical condition".<sup>11</sup> Other studies to a similar effect have followed.<sup>12</sup> There have even been calls from a philosopher's perspective to "reject homeopathy".<sup>13</sup> A 2011 study found homeopathic consultations beneficial for patients with rheumatism, but not homeopathic treatments.<sup>14</sup> More tellingly for the modality of homeopathy, in 2010 a House of Commons Science and Technology Report on Homeopathy<sup>15</sup> determined that:

- "[T]he systematic reviews and meta-analyses conclusively demonstrate that homeopathic products perform no better than placebos" (at [70]);
- "There has been enough testing of homeopathy and plenty of evidence showing that it is not efficacious. Competition for research funding is fierce and we cannot see how further research on the efficacy of homeopathy is justified in the face of competing priorities" (at [77]);
- "For patient choice to be real choice, patients must be adequately informed to understand the implications of treatments. For homeopathy this would certainly require an explanation that homeopathy is a placebo. When this is not done, patient choice is meaningless. When it is done, the effectiveness of the placebo – that is, homeopathy – may be diminished. We argue that the provision of homeopathy on the NHS, in effect, diminishes, not increases, informed patient choice" (at [101]);
- "Patients who do not seek medical advice from properly qualified doctors run the risk of missing serious underlying conditions while they have their symptoms treated with a placebo" (at [107]).

The United Kingdom Government response<sup>16</sup> accepted the Committee's view of the scientific credentials of homeopathy, noting that the Government Chief Scientific Adviser could not "envisage scientifically credible proposals for funding research into homeopathy in the future, although logically they cannot be ruled out".

From time to time cases that come before the courts and disciplinary tribunals reflect unfairly upon the practices and values of health professions. Often they are not representative of general practices and values within a profession; it is not fair to judge a profession by its worst practitioners.

<sup>10</sup> For another example of this phenomenon, see the letter written on 30 November 2011 by prominent Australian doctors complaining about the teaching of a chiropractic course by the Central University of Queensland on the basis that it is not scientifically justifiable: *University Challenged for Giving Undeserved Credibility to Alternative Therapies*, <http://www.australasianscience.com.au/article/issue-december-2011/university-challenged-giving-undeserved-credibility-alternative-therapie> viewed 6 February 2012.

<sup>11</sup> Linde K, "Are the Clinical Effects of Homeopathy Placebo Effects? A Meta-analysis of Placebo-controlled Trial" (1997) 350 *The Lancet* 834.

<sup>12</sup> See eg the slightly more positive but adverse findings by Cucherat M, Haugh MC, Gooch M and Boissel JP, "Evidence of Clinical Efficacy of Homeopathy. A Meta-analysis of Clinical Trials. HMRAG. Homeopathic Medicines Research Advisory Group" (2000) 56(1) *European Journal of Clinical Pharmacology* 27; Kleijnen J, Knipschild P and ter Riet G, "Clinical Trials of Homeopathy" (1991) 302 *BMJ* 316; Linde K and Melchart D, "Randomized Controlled Trials of Individualized Homeopathy: A State-of-the-Art Review" (1998) 4 *J Alter Complement Med* 371; Hill C and Doyon F, "Review of Randomized Trials of Homeopathy" (1990) 38 *Rev Epidme et Sante Publ* 139.

<sup>13</sup> See eg Schon S and Stanley D, "Evidence and Simplicity: Why We Should Reject Homeopathy" (2010) 16 *Journal of Evaluation in Clinical Practice* 276.

<sup>14</sup> Brien S et al, "Homeopathy has Clinical Benefits in Rheumatoid Arthritis Patients That are Attributable to the Consultation Process but not the Homeopathic Remedy: A Randomized Controlled Clinical Trial" (2011) 50(6) *Rheumatology* 1070.

<sup>15</sup> United Kingdom, House of Commons, Science and Technology Committee, *Evidence Check 2: Homeopathy* (HC 45, The Stationery Office, London, 2010), <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmsctech/45/45.pdf> viewed 2 January 2012.

<sup>16</sup> *Government Response to the Science and Technology Committee Report "Evidence Check 2: Homeopathy"* (Cm 7914, London, 2010) at [24], [http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh.digitalassets/@dh/@en/@ps/documents/digitalasset/dh\\_117811.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh.digitalassets/@dh/@en/@ps/documents/digitalasset/dh_117811.pdf) viewed 1 January 2012.



To this extent the title of this column is unfair. However, it serves to draw attention constructively to the potentially fatal consequences of undiscerning and inappropriate provision of complementary medicine, in particular homœopathy, or of Western medicine by persons qualified in homœopathy but not in Western medicine.

This column analyses a series of criminal, civil, disciplinary and coronial decisions from different countries in relation to homœopathic medicine where outcomes have been tragic.<sup>17</sup> It reflects upon the repercussions of the decisions for the profession of homœopathy and for the movement toward formal registration and regulation of the discipline in Western countries.

## HOMŒOPATHY

Homœopathy (Greek “homoios pathos”: “same/like suffering”) has been described as “a method of treating disease by drugs, given in minute doses, which produce in a healthy person symptoms similar to those of the disease”.<sup>18</sup> It is important to distinguish it from “naturopathy” with which it intersects but of which it is but a subset.<sup>19</sup>

<sup>17</sup> In this regard it is resonant of issues that arose in the Dutch case (LJN: BO7707, Gerechtshof Amsterdam, 23-003453-09; see Freckelton I, “Unscientific Health Practice and Disciplinary and Consumer Protection Litigation” (2011) 18 JLM 645 at 648 (Editorial)) where a spiritual healer, Jomanda, also known as “the Lady of the Light”, a member of the Dutch Association of Internists, a physician and a “salt therapy” practitioner, persuaded a well-known actress and television personality, Sylvia Millecam, that she had a bacterial infection, not the breast cancer which ultimately killed her. A suspended jail sentence was imposed on one of the doctors, one was deregistered and one was suspended from practice for a year for their negligent practice of alternative medicine resulting in an unnecessary death. See Sheldon T, “Dutch Doctor Struck Off for Alternative Care of Actor Dying of Cancer” (5 July 2007) 135 BMJ 13. A number of claims have been made that Apple founder Steve Jobs indulged in homœopathic treatments, rather than conventional treatment for pancreatic cancer (see eg “Steve Jobs Was Likely a Victim of Homeopathy, Expert Tells Australian Conference”, *New York Post* (12 December 2011), [http://www.nypost.com/p/news/international/steve\\_jobs\\_was\\_likely\\_victim\\_conference\\_UsflbUtE2MZpFr9py0rJXP](http://www.nypost.com/p/news/international/steve_jobs_was_likely_victim_conference_UsflbUtE2MZpFr9py0rJXP) viewed 12 January 2012). However, the evidence for the contention that homœopathy played any role in his death seems highly dubious. What is highlighted, including by his biographer (see Isaacson W, *Steve Jobs* (Simon & Schuster, New York, 2011) is that delay in treatment on the basis of any form of alternative medicine has the potential to have highly deleterious consequences: see Wapner J, “Did Alternative Medicine Extend or Abbreviate Steve Jobs’s Life?”, *Scientific American* (27 October 2011), <http://www.scientificamerican.com/article.cfm?id=alternative-medicine-extend-abbreviate-steve-jobs-life> viewed 12 January 2012).

<sup>18</sup> *Rose v Health Commission (NSW)* [1986] NSWCC 2; (1986) 2 NSWCCR 32 at [3]. See too Bellavite P and Signorini A, *Homeopathy: A Frontier in Medical Science* (North Atlantic Books, Berkeley, California, 1995). See too McLean L, *100 Facts about Homeopathy*, <http://www.hpathy.com/homeopathy-papers/100-facts-about-homeopathy> viewed 12 January 2012. In relation to the trademark status of Bach Flower Remedies see *Bach Flower Remedies Ltd* [2002] NZIPOTM 60; *Healing Herbs Ltd v Bach Flower Remedies Ltd* [1998] EWHC Patents 318. On the relationship between Bach Flower Remedies and homœopathy, see Morrell P, *The Bach Flower Remedies and Homeopathy*, <http://www.homeoint.org/morrell/articles/bach.htm> viewed 2 January 2012.

<sup>19</sup> See American Association of Naturopathic Physicians, *What is Naturopathic Medicine?*, <http://www.naturopathic.org/content.asp?contentid=59> viewed 12 January 2012:

Naturopathic medicine is based on the belief that the human body has an innate healing ability. Naturopathic doctors (NDs) teach their patients to use diet, exercise, lifestyle changes and cutting edge natural therapies to enhance their bodies’ ability to ward off and combat disease. NDs view the patient as a complex, interrelated system (a whole person), not as a clogged artery or a tumor. Naturopathic physicians craft comprehensive treatment plans that blend the best of modern medical science and traditional natural medical approaches to not only treat disease, but to also restore health.

Naturopathic physicians base their practice on six timeless principles founded on medical tradition and scientific evidence.

- Let nature heal. Our bodies have such a powerful, innate instinct for self-healing. By finding and removing the barriers to this self-healing – such as poor diet or unhealthy habits – naturopathic physicians can nurture this process.
- Identify and treat causes. Naturopathic physicians understand that symptoms will only return unless the root illness is addressed. Rather than cover up symptoms, they seek to find and treat the cause of these symptoms.
- First, do no harm. Naturopathic physicians follow three precepts to ensure their patients’ safety:

Use low-risk procedures and healing compounds – such as dietary supplements, herbal extracts and homœopathy – with few or no side effects.



Homœopathy is a system of medicine developed by the German physician and chemist, Dr Christian Friedrich Hahnemann (1755-1843),<sup>20</sup> as what he called a new form of therapeutic treatment after six years of testing and study of the administration of drugs on himself and others,<sup>21</sup> including in the context of malaria, in respect of which he self-administered cinchona bark (quinine) and allegedly induced the symptoms. Hahnemann gained popular esteem from what was asserted to be his successful treatment of typhus with homœopathic doses of *Rhus tox*, *Hyoscyamus* and *Bryonia* during the battle of Leipzig in 1813.<sup>22</sup>

The intellectual origins of homœopathy can be traced in part to the “humoral theory of health”,<sup>23</sup> which is based on the principle of “let likes cure likes” (*similia similibus curantur*); and the “Law of the Infinitesimal Dosage” (“the more dilute the remedy, the greater its potency”). Thus, homœopathic remedies are usually prepared through a process of diluting with pure water or alcohol and vigorous shaking such that it is believed that with greater dilution comes the potential for greater efficacy.

Homœopathy traces its origins to both Hippocrates (460-377)<sup>24</sup> and Paracelsus (1493-1541),<sup>25</sup> and the notion that substances that produce symptoms in a healthy individual can be used to treat similar symptoms in a sick person. In this regard, though, “Homœopathic treatment is believed to stimulate the body’s ability to fight infection and susceptibility to disease”.<sup>26</sup> Its tenets are prescriptive

When possible, do not suppress symptoms, which are the body’s efforts to self-heal. For example, the body may cook up a fever in reaction to a bacterial infection. Fever creates an inhospitable environment for the harmful bacteria, thereby destroying it. Of course, the naturopathic physician would not allow the fever to get dangerously high.

Customize each diagnosis and treatment plan to fit each patient. We all heal in different ways and the naturopathic physician respects our differences.

- Educate patients. Naturopathic medicine believes that doctors must be educators, as well as physicians. That’s why naturopathic physicians teach their patients how to eat, exercise, relax and nurture themselves physically and emotionally. They also encourage self-responsibility and work closely with each patient.
- Treat the whole person. We each have a unique physical, mental, emotional, genetic, environmental, social, sexual and spiritual makeup. The naturopathic physician knows that all these factors affect our health. That’s why he or she includes them in a carefully tailored treatment strategy.
- Prevent illness. “An ounce of prevention is worth a pound of cure” has never been truer. Proactive medicine saves money, pain, misery and lives. That’s why naturopathic physicians evaluate risk factors, heredity and vulnerability to disease. By getting treatment for greater wellness, we’re less likely to need treatment for future illness.

See too the College of Naturopathic Medicine UK, *What is Naturopathy?*, <http://www.naturopathy-uk.com/home/home-what-is-naturopathy> viewed 12 January 2012.

<sup>20</sup> See *CEMON SRL Inc v Dynamise Botanicals Inc* 2011 TMOB 174 (CanLII) at [45]. See also Cook TM, *Samuel Hahnemann: His Life and Times* (3rd ed, B Jain Publishers, New Delhi, 2005); Haehl R, *Samuel Hahnemann: His Life and Work* (B Jain Publishers, New Delhi, 2003); Hobhouse RW, *Christian Samuel Hahnemann: The Founder of Homœopathy* (B Jain Publishers, New Delhi, 2001).

<sup>21</sup> See Hahnemann S, *The Organon of Medicine* (6th ed, B Jain Publishers, Delhi, 2004) (tr W Boerecke); Bradford TL, *The Life and Letters of Dr Samuel Hahnemann* (presented by Dr Robert Seror), <http://www.homeoint.org/books4/bradford/index.htm> viewed 10 January 2012.

<sup>22</sup> See Bradford, n 21, Ch 23, <http://www.homeoint.org/books4/bradford/chapter23.htm> viewed 12 January 2012.

<sup>23</sup> See Bynum WF, *Science and the Practice of Medicine in the 19th Century* (Cambridge University Press, Cambridge, 1994) pp 13-14. Compare “Thomsonianism”: see Berman A, “Neo-Thomsonianism in the United States” (1956) 11(2) *Journal of Medicine and Allied Sciences* 133.

<sup>24</sup> Who argued that there were two forms of cures: the law of opposites and the law of similar.

<sup>25</sup> See Morrell P, *Homeopathy – Theory and Method*, [http://www.homeoint.org/morrell/articles/pm\\_theor.htm](http://www.homeoint.org/morrell/articles/pm_theor.htm) viewed 3 January 2012.

<sup>26</sup> Australian Homœopathic Association, *What is Homœopathy?*, <http://www.homeopathyoz.org/WhatIsHomeopathy.html> viewed 30 December 2011. “Homeopathy is based on two principles: ‘like-cures-like’ whereby a substance that causes a symptom is used in diluted form to treat the same symptom in illness and ‘ultra-dilution’ whereby the more dilute a substance the more potent it is (this is aided by a specific method of shaking the solutions, termed ‘succussion’). It is claimed that homeopathy works by stimulating the body’s self-healing mechanisms”: United Kingdom, House of Commons, Science and Technology Committee, n 15 at [9]. See too Kroumova G and Atalick R, *History of Homœopathy*, [http://www.homeopathy-gelien.com/en/history\\_of\\_homeopathy.php](http://www.homeopathy-gelien.com/en/history_of_homeopathy.php) viewed 28 December 2011.



but require a level of “belief”. As Kent has put it, “In homoeopathy the law and its principles must be accepted as authority”.<sup>27</sup> This quasi-religious and romantic aspect of the discipline has been remarked upon by many, including Close, who has commented:

[H]omeopathy is the original protestant offshoot from the “Tomish Church” of medicine, and Hahnemann was its Luther. It represents the revolt of thinking, progressive men against the tyranny of tradition; against corrupt allegiances and perversion of principles, against ignorance, bigotry and intolerance; against medical “witchcraft” and aggression; against “Medical Trusts” and oligarchies, all of which have had and still have representation and embodiment in medicine.<sup>28</sup>

Section 3 of the *Homeopathy Act 2007* (Ont) defines the practice of homoeopathy as “the assessment of body system disorders and treatment using homeopathic techniques to promote, maintain or restore health”.

Homoeopathy distinguishes itself from conventional medicine (often referred to in Hahnemann’s language as “allopathic medicine”) on the basis that the latter regards disease as caused by bacteria and viruses and therefore aims to eliminate such pathogens. By contrast:

Homoeopathic treatment strengthens a person’s health, acting as a catalyst, stimulating and directing the body’s ability to fight infection, as well as resolving any underlying susceptibility to disease. Homoeopathy views many symptoms in its quest to treat underlying tendencies to ill health. In this context, mental and emotional symptoms can play an important part in understanding this susceptibility.

Homoeopathy aims to treat the whole person, taking into account personality, lifestyle and hereditary factors as well as the history of the disease. Since all patients are unique, homoeopathic medicines are prescribed to treat patients as individuals. For example, headaches in different patients would each be treated with different medicines, according to the patient’s individual symptoms.

Homoeopathy can be of benefit for all ages, at any stage including pregnant women, mothers, fathers, babies, young children, teenagers, and the elderly. Homoeopathy can treat the symptoms of a wide range of conditions including, for example:

- Acute complaints – coughs, colds, earache, food poisoning, hangover, travel sickness etc.
- Chronic complaints – skin conditions, hormone imbalances, depression, headaches, behavioural problems, digestive disturbances, asthma, arthritis etc.
- First aid situations – bites, stings, hives, injuries, trauma, shock etc.
- Vague symptoms - where there are no identifiable causes of disease, but the person feels far from well.<sup>29</sup>

Hahnemann formed the view that there were certain diseases that lay in the background of chronic illness, passed down from generation to generation. He called these diseases “miasms” and believed that they were associated with venereal infections. The first and most basic miasm was “psora” associated with the itch that can accompany the scabies mite.

There are around 2,000 homoeopathic remedies with recorded therapeutic effects. The remedies can be prescribed in a number of forms, but tablets and liquid preparations are most common.<sup>30</sup> “Potentisation” purports to make diluted, inert substances active by releasing their energy. According to Hahnemann, homoeopathic potentisations are processes by which the medicinal properties of drugs, which are in a latent state in the crude substance, are excited and enabled to act spiritually upon the “vital forces”. Simple dilution of a drug is insufficient to produce a cure. To achieve potentisation, after each successive 1-to-9 or 1-to-100 dilution, the solution must be shaken vigorously (“succussion”) so as to enhance its efficacy. In the case of a powdered substance, it must be vigorously ground up (“trituration”). Potentisation liberates the energy of the substance being used for treatment and this liberated energy is believed to remain, even in the lowest doses.

<sup>27</sup> Kent JT, *Lectures on Homoeopathic Philosophy* (B Jain Publishers, New Delhi, 2003) p 45.

<sup>28</sup> Close S, “Medical Protestantism” (1927) 42 *Homeopathic Recorder* 422 at 423; see also Haller JS Jr, *The History of American Homeopathy: From Rational Medicine to Holistic Health Care* (Rutgers University Press, New Brunswick, 2009).

<sup>29</sup> Australian Homoeopathic Association, n 26.

<sup>30</sup> New South Wales Health Department, *Regulation of Complementary Health Practitioners – A Discussion Paper* (2002) at 2.2.4, [http://www.health.nsw.gov.au/resources/publichealth/clinicalpolicy/pdf/compmed\\_paper.pdf](http://www.health.nsw.gov.au/resources/publichealth/clinicalpolicy/pdf/compmed_paper.pdf) viewed 4 January 2012.



In order to investigate the potential powers of substances, Hahnemann tested them on himself and on healthy volunteers or “provers”, recording all the symptoms that each substance caused. In 1814 he created a “Provers Union” of “ten disciples” whose role it was to submit to provings and to evangelise and extol the benefits of the discipline, in part from their own experience.<sup>31</sup>

However, one of the concerns raised by critics of homœopathy is that it is fallacious to assert that homœopathy is a single, unified school.<sup>32</sup> This arises from the fact that an extraordinarily wide diversity of substances is used by homœopaths, some of them more than a little unusual. Examples are the “provings”<sup>33</sup> of a great many plant extracts and other substances such as acids but also of ground-up pieces of the Berlin Wall,<sup>34</sup> of a shipwreck,<sup>35</sup> plutonium,<sup>36</sup> placentas,<sup>37</sup> the focused light of the planet Venus,<sup>38</sup> nitroglycerin<sup>39</sup> and chocolate.<sup>40</sup>

## HOMŒOPATHY IN ENGLAND

There is a history of over 200 years of practice of homœopathy in England. It was introduced by Dr FHF Quin (1799-1878),<sup>41</sup> an English aristocrat, friend of Dickens and Thackeray, and regular dining partner of Edward, Prince of Wales (1841-1910), the future King Edward VII. Quin established the British Homeopathic Society (BHS) in 1843, the *British Journal of Homeopathy* (BJH) in 1844

<sup>31</sup> *The Provers Union* (2 July 2011), <http://www.homeopathyinfo.com/?p=436> viewed 24 January 2012, quoting Hahnemann's account of the role of the provers (“Allgem. Anzeiger der Deutschen”, No 24, of 25 January 1839): “Most of the symptoms as one will see, where the name of the prover is not mentioned, have been observed by me, or by members of my family, to whom I gave the remedy myself. The medicines were usually taken dissolved in a larger or smaller quantity of water, once or twice daily, or less frequently, in order to become acquainted with the effects of the medicines in every respect. The chief thing was, always to see that the provers should be free from erroneous diet and mode of living, as healthy as possible, and keen to explore the high truths which we are expecting to find, with a strong sense of conscientious honesty, without expecting the slightest worldly advantage, not even to hope for the honour of being publicly mentioned as a prover. They were mostly well known friends and hearers of my lectures. Each one of them was interrogated daily, or every two or three days, on the symptoms experienced by them, partly in order to enquire if any one of them had previously experienced similar sensations (that this might be put in brackets when printing as not altogether due to the medicine), partly that the exact character of his sensations and observations might be compared with the words written down, and perhaps important secondary considerations of any value were mentioned at the same time together with the symptoms under which they occurred; I drew the attention of each of them, beforehand, to such conditions. All were persons capable of carrying out observations, and of absolute honesty of purpose, so that I could vouch for them, and I do; each was striving for the holy purpose of seeking these new and indispensable discoveries for the welfare of suffering humanity, giving his time, even sacrificing his health, so as to carry out with true zeal, the best possible work for the good cause. In this way I continue even now to perfect the true art of healing.” In respect of one of “the disciples”, see *Johann Stapf*, [http://www.wholehealthnow.com/homeopathy\\_pro/johann\\_stapf.html](http://www.wholehealthnow.com/homeopathy_pro/johann_stapf.html) viewed 24 January 2012.

<sup>32</sup> See Ernst E, “Homeopathy, Past, Present and Future” (1997) 44 Br J Clin Pharmacol 435.

<sup>33</sup> See Fraser P, *The Proving of Homœopathic Remedies*, <http://www.hominf.org/articles/posheal.htm> viewed 6 January 2012. For an extensive account of a “proving”, see de Pieri L, *A Homeopathic Proving of Oplonanax Horridus – Devil's Club*, <http://www.homeopathyvancouver.com/wp-content/uploads/files/ophopanax.pdf> viewed 8 January 2012. See also European Committee for Homeopathy, *Homeopathic Drug Proving Guidelines* (June 2011), [http://www.homeopathyeurope.org/publications/guidelines/homeopathic-provings/ECH\\_Proving\\_Guidelines\\_v1.pdf](http://www.homeopathyeurope.org/publications/guidelines/homeopathic-provings/ECH_Proving_Guidelines_v1.pdf) viewed 4 January 2012.

<sup>34</sup> See the account by the co-founder and a director of the Irish School of Homeopathy: Hammond D, *A Case for Berlin Wall* (May 2011), <http://www.hpathy.com/clinical-cases/a-case-for-berlin-wall> viewed 8 January 2012.

<sup>35</sup> See English ML, *The Homeopathic Proving of Naufragium Helvetia (the Shipwreck)*, <http://www.maryenglish.com/helvetiaproving.html> viewed 8 January 2012.

<sup>36</sup> See Sherr J, *The Homeopathic Proving of Plutonium Nitricum*, <http://www.minimum.com/b.asp?a=plutonium-nitricum-sherr> viewed 8 January 2012.

<sup>37</sup> See Moonson, *Placental Remedy*, <http://www.moonson.com.au/placental.html> viewed 8 January 2012.

<sup>38</sup> See *Venus Proving: The Homeopathic Proving of “Venus Stella Errans”*, <http://www.btinternet.com/~wellmother/venusbase.htm> viewed 8 January 2012.

<sup>39</sup> See Fye WB, *Nitroglycerin: A Homeopathic Remedy*, <http://www.circ.ahajournals.org/content/73/1/21.full.pdf> viewed 8 January 2012.

<sup>40</sup> See Sherr J, *The Homeopathic Proving of Chocolate* (Nrayana Publishers, Kandern, 2003).

<sup>41</sup> See Leary B, “Dr Quin, Founder of the Hospital” (1989) 78(4) BJH 204; Leary B, “Dr Quin” (1991) 41(1) *Homeopathy* 19.



and a London hospital in 1850. However, British homœopathy was significantly influenced by its cousin in the United States, predominantly by the mystical ideas and theological beliefs of James Kent (1849-1916).<sup>42</sup>

As of 2012, there remain four homœopathic hospitals in the United Kingdom: in London,<sup>43</sup> Bristol, Liverpool and Glasgow. A fifth in Tunbridge Wells was closed in 2009. Homœopathy has been funded on the National Health Service since its inception in 1948. The Faculty of Homeopathy is the registration body for statutorily registered health care professionals who have also trained in homœopathy. It was formed in 1944 from the British Homeopathic Society. In 1950 the Faculty of Homeopathy was incorporated by an Act of Parliament.

From the days of Dr Quin, homœopathy has had a close association with the English Royal Family.<sup>44</sup> Dr Margery Blackie,<sup>45</sup> arguably the most eminent homœopathic doctor of her generation, was a physician to Elizabeth II, and the Queen Mother became patron of the British Homeopathic Association in 1982, attending receptions celebrating its 90th and 95th anniversaries in 1992 and 1997.<sup>46</sup> The homœopathic pharmacy Ainsworth's in New Cavendish Street, London, holds all three Royal warrants as "Chemists Royal". Morrell<sup>47</sup> has observed that:

[In the 1840s] homeopathy was entirely dominated by a medically-qualified elite with a wealthy clientele of aristocrats and only a microscopic lay movement. Today the opposite holds true: it is numerically dominated by professional homeopaths, who have, singlehandedly, brought about its resuscitation from a "near-death experience" in the mid-seventies.

## HOMŒOPATHY IN AUSTRALIA

Homœopathy was introduced to Australia during the mid-19th century at a time when the medical establishment was decrying the conduct of a wide variety of quacks and medical charlatans.<sup>48</sup> The first homœopath to come to Australia is believed to have been Dr Stephen Simpson, who arrived in Sydney from England in 1840.<sup>49</sup> After six months he moved to Queensland, to become a government administrator. Dr William Sherwin, a practitioner who was born in Australia and gained his qualifications in England, was the first "home-grown" doctor to use homœopathy. It is likely that he was Australia's second homœopath.<sup>50</sup> In 1857 John Bell<sup>51</sup> established the Sydney Homœopathic Pharmacy in George Street opposite Bell Street, advertising the year before that:

This institution has been established with the view of meeting the daily and increased wants of the homœopathic public in New South Wales and the Australasian colonies generally. The main object of

<sup>42</sup> See Morrell P, *Kent's Influence on British Homeopathy*, [http://www.homeoint.org/morrell/articles/pm\\_kent.htm](http://www.homeoint.org/morrell/articles/pm_kent.htm) viewed 6 January 2012. Kent forged connections between Swedenborgianism (see <http://www.swedenborg.newearth.org>) and homœopathy.

<sup>43</sup> See Morrell P, *The London Homeopathic Hospital*, <http://www.homeoint.org/morrell/articles/rlhh.htm> viewed 5 January 2012.

<sup>44</sup> See Morrell P, *A History of Homeopathy in Britain*, <http://www.homeopathyhome.com/reference/articles/ukhomhistory.shtml> viewed 5 January 2012.

<sup>45</sup> See Babington Smith C, *Champion of Homeopathy – The Life of Margery Blackie* (John Murray, London, 1986); Blackie M, *The Patient, Not the Cure: The Challenge of Homeopathy* (Woodbridge Press, London, 1976). See too Blackie Foundation Trust, <http://www.blackieft.org> viewed 25 December 2011.

<sup>46</sup> See British Homeopathic Association, *Looking Back*, [http://www.britishhomeopathic.org/about\\_homeopathy/homeopathy\\_looking\\_back.html](http://www.britishhomeopathic.org/about_homeopathy/homeopathy_looking_back.html) viewed 25 December 2011.

<sup>47</sup> Morrell P, *A History of Homeopathy in Britain*, [http://www.homeoint.org/morrell/articles/pm\\_brita.htm](http://www.homeoint.org/morrell/articles/pm_brita.htm) viewed 2 January 2012.

<sup>48</sup> See Martyr P, *A Paradise of Quacks: An Alternative History of Medicine in Australia* (Macleay Press, Sydney, 2002).

<sup>49</sup> See Martin and Pleasance, *A History of Homeopathy in Australia*, <http://www.martinandpleasance.com/homeopathic-lab/history-of-homeopathy-in-australia> viewed 24 January 2012.

<sup>50</sup> Torokfalvy P and Armstrong B, *Homeopathy in Australia – A Brief History*, [http://www.homeopathyoz.org/downloads/HomHistoryAUSTRALIA\\_full.pdf](http://www.homeopathyoz.org/downloads/HomHistoryAUSTRALIA_full.pdf) viewed 30 December 2011; see also Armstrong B, "Australia's First 'Home-Grown' Homœopath" (2007) 19(2) *Similia* 24.

<sup>51</sup> A grandson of Sir Charles Bell, the Scottish anatomist, surgeon, physiologist and natural theologian who gave his name to Bell's nerve, Bell's palsy, Bell's phenomenon, Bell's spasm.





the proprietors will be the preparation and supply of every homœopathic medicine as recognised by the English and continental pharmacopœas, and will be prepared according to the adopted centesimal and decimal scales.

The advantage to be derived from the preparation of the medicines in the colony, instead of by importation, is too obvious to need any comment. Another equally important object of this establishment will be the dispensing of prescriptions, an operation requiring nice exactness and delicacy – an essential feature in homœopathic pharmacy. The proprietors, in alluding to this branch of the business have permission to state that on and after the 2nd January, 1857, the prescriptions of Dr Bellamy will be dispensed at the Pharmacy; and having obtained the confidence and patronage of that gentleman, the public may rest assured that every prescription will not only be most accurately dispensed, but charged on a moderate scale.

In addition to the above there will be constantly on sale the various external remedies required for professional and domestic use. Medicine cases fitted up for globules or tinctures; with “Domestic Guides.” The different publications of the day on the subject of Homœopathic regularly in stock, with a variety of useful Addenda. The best prepared homœopathic cocoa, and farinaceous foods, &c. &c.<sup>52</sup>

It has been claimed that either Thienette de Berigny or Dr John Hickson introduced homœopathy to Victoria in the 1850s; Berigny settled in Victoria in 1855, whereas Hickson already had a homœopathic practice in Melbourne’s suburbs by 1850.<sup>53</sup> Both men championed the cause of homœopathy in the local newspapers, *The Argus* and *The Age*.

In Queensland, homœopathy was practised by Dr Stephen Simpson, who had been a student of Hahnemann and was the author of the *Principle Advantages of Homœopathy* (1836) which may have been the first publication in English on the subject of homœopathy.<sup>54</sup>

In South Australia, homœopathy was introduced by Lutheran immigrants and in particular missionaries from Germany.<sup>55</sup> An early practitioner was Dr Johann Zwar who practised homœopathy for about half a century, commencing in the middle part of the 19th century. In 1867 in the midst of typhoid and diphtheria epidemics, the Adelaide Homœopathic Dispensary was established to provide medical aid for the poor.<sup>56</sup>

Rosendo Salvado,<sup>57</sup> a Benedictine monk, is credited as being the first person to practise homœopathic medicine in Western Australia. In 1846 he and three other monks founded a monastery at New Norcia on the banks of the Moore River, and in due course commenced to dispense homœopathic remedies to the indigenous population in the vicinity.<sup>58</sup> He regularly corresponded with Florence Nightingale.

In Tasmania (then Van Diemen’s Land) Mr Frederick C Atkinson opened “The Hobart Town Homœopathic Establishment” in 1848 in Macquarie Street in Hobart.<sup>59</sup> This may have been Australia’s first homœopathic pharmacy. He commenced to offer what appear to have been lay consultations. However, Dr Ebernezer Atherton, who arrived in Tasmania in 1866, was possibly

<sup>52</sup> See Armstrong B, *Bell and Huntley Homœopathic Pharmacy*, <http://www.historyofhomeopathy.com.au/component/flexicontent/items/item/16-bell-and-huntley-homoeopathic-pharmacy.html> viewed 20 January 2012.

<sup>53</sup> See Bishop H, *A History of Homœopathy in South Australia* (2005), <http://www.hopathy.com/homeopathy-papers/the-history-of-homoeopathy-in-south-australia> viewed 13 January 2012. See too *Homeopathic History in Victoria*, [http://www.homeopathiccentre.com.au/Homeopathy\\_Victoria.htm](http://www.homeopathiccentre.com.au/Homeopathy_Victoria.htm) viewed 12 January 2012; Das E, *History and Status of Homœopathy Around the World* (B Jain Publishers, New Delhi, 2005).

<sup>54</sup> Bishop, n 53.

<sup>55</sup> See Bishop, n 53.

<sup>56</sup> See Armstrong B, “South Australia’s Unregistered Homœopaths of 1886” (2010) 22(2) *Similia* 44.

<sup>57</sup> See generally William D, “Salvado, Rosendo (1814-1900)”, *Australian Dictionary of Biography*, <http://www.adb.anu.edu.au/biography/salvado-rosendo-2627> viewed 12 January 2012.

<sup>58</sup> See *WA Homœopathic History*, <http://www.owenhomeopathics.com.au/pages/wa-homoeopathic-history.php> viewed 18 January 2012.

<sup>59</sup> See Armstrong B, *Mr Frederick C Atkinson’s Homœopathic Establishment*, [http://www.historyofhomeopathy.com.au/index.php?option=com\\_flexicontent&view=items&id=271:mr-frederick-c-atkinsons-homopathic-establishment](http://www.historyofhomeopathy.com.au/index.php?option=com_flexicontent&view=items&id=271:mr-frederick-c-atkinsons-homopathic-establishment) viewed 12 January 2012.



Hobart's first fully-qualified homœopathic practitioner. An early prominent early practitioner was Dr George Gibson, son of a homœopath in England, who helped to found the Hobart Homœopathic Hospital in 1899.<sup>60</sup>

Free homœopathic dispensaries for the poor were set up in Victoria (Geelong, Melbourne and Ballarat), Adelaide in South Australia, and Sydney in New South Wales. The Melbourne Homœopathic Hospital (later Prince Henry's Hospital) was established in 1876<sup>61</sup> and then the Hobart Homœopathic Hospital (1899), the Launceston Homœopathic Hospital (later St Luke's Hospital) (1900), and then the Sydney Homœopathic Hospital (1902).<sup>62</sup> Harder times followed for the discipline and by 1959 in *Sydney Homœopathic Hospital v Turner* (1959) 102 CLR 188 at 216; [1959] HCA 19 at [3] Kitto J observed that in the previous 40 years

the practice of homœopathy had declined almost to the point of extinction. Indeed, since 1945, although there had always been at least one bed kept available in the appellant's hospital for any patient of a homœopathic practitioner, no homœopathic treatment had been given there.<sup>63</sup>

However, during the past three decades homœopathy has had something of a revival in many Western countries as part of the resort by patients disenchanted with conventional medicine to alternative and complementary therapies.<sup>64</sup> Nine institutions currently offer homœopathy courses in Australia.<sup>65</sup>

In Australia, although national registration does not yet exist for homœopaths, some of the prerequisites for such a status have been achieved. There is now the Australian Register of Homœopaths,<sup>66</sup> a *Code of Professional Conduct* for Homœopaths<sup>67</sup> and from 1999 National Competency Standards in Homœopathy<sup>68</sup> which are incorporated in the federal government's Health Training Package<sup>69</sup> and define what should be taught in accredited courses in homœopathy as conducted by registered training organisations. These were first established in 2002, and are reviewed biennially by the profession in conjunction with the Federal Government. However, serious question marks exist as to whether the fundamental prerequisite for registration of homœopathy exists – namely, its status as a scientifically defensible health discipline.

<sup>60</sup> See Humphreys S, "Implausible: The History of Homœopathy in Tasmania: Part One" (2006) 18(2) *Similia* 16; Humphrey S, "Implausible: The History of Homœopathy in Tasmania: Part Two" (2007) 19(1) *Similia* 31.

<sup>61</sup> See Templeton L, *Prince Henry's: The Evolution of a Melbourne Hospital, 1869-1969* (Robertson & Mullen, Melbourne, 1969).

<sup>62</sup> See *History of Homœopathy in Australia*, <http://www.historyofhomeopathy.com.au/index.php> viewed 1 January 2012.

<sup>63</sup> See too *Congregational Union of NSW v Thistlethwayte* (1952) 87 CLR 375; [1952] HCA 48. Bishop, n 53, has observed that "Between the 1920s and the 1940s Homœopathy experienced an almost deathly blow" by reason of the graduation of relatively few homœopaths and the development of drugs such as penicillin and the emergence of vaccinations and new forms of surgery within allopathic medicine.

<sup>64</sup> See Haller JS Jr, *The History of American Homeopathy: The Academic Years, 1820-1935* (Informa Healthcare, New York, 2005); Haller JS Jr, *The History of American Homeopathy: From Rational Medicine to Holistic Health Care* (Rutgers University Press, 2009); Eklof M, *Outdated Fraudulent Healing? Homeopathy on Trial: The Homeopathic "Pill Scandal" in the 1950s and Modernisation of Health Care in Sweden*, <http://www.ep.liu.se/ej/hygica/v6/i2/a10/hygica07v6i2a10.pdf> viewed 1 January 2012.

<sup>65</sup> *Homeopathy Courses*, <http://www.hotcourses.com.au/australia/all-homeopathy-courses-australia/nq-aus-all/db-a28.9/order-cd-1/kw/courses.html> viewed 2 January 2012.

<sup>66</sup> See *Australian Register of Homœopaths*, <http://www.aroh.memberlodge.com> viewed 1 January 2012.

<sup>67</sup> Australian Register of Homœopaths Ltd, *Code of Professional Conduct*, <http://www.aroh.memberlodge.com/Resources/Documents/Code%20of%20Conduct%20v1.3.pdf> viewed 1 January 2012.

<sup>68</sup> See too Australian Register of Homœopaths Ltd, *Guidelines for Recognition of Current Competency for the Purposes of Registration by the Australian Register of Homœopaths*, <http://www.aroh.memberlodge.com/Resources/Documents/Recognition%20of%20Current%20Competencies.pdf> viewed 1 January 2012.

<sup>69</sup> See Torokfalvy P, *Homeopathy in Australia*, <http://www.hopathy.com/past-present/homeopathy-in-australia> viewed 28 December 2011.



## HOMŒOPATHY IN NEW ZEALAND

The first recorded homœopath in New Zealand<sup>70</sup> was Dr William Purdie, a graduate of Glasgow, who arrived in December 1849, and settled in Dunedin. The New Zealand Homeopathic Society was founded in 1951. As of 2012 there are four manufacturing homœopathic pharmacies in New Zealand and three colleges that offer training in homeopathy: the Wellington College of Homeopathy; the Bay of Plenty College of Homeopathy, which has faculties in Tauranga, Auckland and Christchurch; and the South Pacific College of Natural Therapies in Auckland. Lady Janine Mateparae, the Governor-General of New Zealand, is the patron of the New Zealand Council of Homeopaths (NZCH).<sup>71</sup> New Zealand's approximately 150 practitioners are informally registered with the NZCH, which publishes standards of practice and receives and deals with complaints. It has been asserted that one in eight New Zealand medical practitioners practises homœopathy or refers patients to homœopaths.<sup>72</sup>

## HOMŒOPATHS AND THE LAW

Issues relating to homœopathy have arisen on a number of occasions under the law.<sup>73</sup> The following sections of this column address key cases internationally in which homœopathy has figured in latter times.

### The Dr Viegas disciplinary decisions (England): 2007 and 2008

Dr Marisa Viegas was a general practitioner with an interest in complementary medicine, especially homœopathy.<sup>74</sup> In 2007 a Fitness to Practise Panel of the General Medical Council found that Dr Viegas had treated a patient, Lady Victoria Waymouth,<sup>75</sup> for a number of years until 1995.<sup>76</sup> She knew her as both a friend and a patient. Thereafter she continued to provide treatment to her patient by giving her advice on alternative therapies. She was aware that Lady Waymouth had been diagnosed with idiopathic dilated cardiomyopathy in 1995. On 22 June 2004 she advised Lady Waymouth to discontinue all medications. Six days later Lady Waymouth was admitted to hospital with heart failure.

Dr Viegas also knew that on 26 July 2004 (after a month in hospital) Lady Waymouth was discharged from the Royal Brompton Hospital by a Professor of Cardiac Medicine with a diagnosis of idiopathic dilated cardiomyopathy and pneumonia. Following Lady Waymouth's discharge, Dr Viegas received a letter from her patient's cardiologist, informing her of Lady Waymouth's recent admission, and explaining the treatment she had received, the medication she had been prescribed on discharge, and her current state of health. The echocardiograms and MRI scans, referred to in the discharge letter, demonstrated a markedly reduced ejection fraction signifying at least moderate heart failure. Lady Waymouth's cardiologist wrote that "her drugs will need to be watched carefully".

The Panel made findings that in June and August 2004 Dr Viegas did not adequately assess Lady Waymouth's condition based upon history, symptoms or an examination, determining that she

<sup>70</sup> For a short history of homœopathy in Canada, see [http://www.sherwoodtowne.com/pb/wp\\_b7b92790.html?0.5](http://www.sherwoodtowne.com/pb/wp_b7b92790.html?0.5) viewed 5 January 2012.

<sup>71</sup> New Zealand Council of Homeopaths, *Regulation of Homeopathy in New Zealand*, <http://www.homeopathy.co.nz/homeopathy/regulations> viewed 9 January 2012.

<sup>72</sup> Poynton L, Dowell A, Dew K and Egan T, "General Practitioners' Attitudes Toward (and Use of) Complementary and Alternative Medicine: A New Zealand Nationwide Survey" (2006) 119 NZMJ 1247.

<sup>73</sup> In relation to a practitioner whose legitimacy to be described as a homœopath was doubted, see *R v Stuart* [1999] VSCA 41. For cases in which a mentally ill patient preferred to place her faith in homœopathy rather than orthodox medicine, see *R (on application of Secretary of State for the Home Department) v Mental Health Tribunal* [2005] EWHC 746 (Admin); *MO (Re)*, 2007 CanLII 45892 (ON CCB); *MS (Re)*, 2011 CanLII 58930 (ON CCB); *RS (Re)*, 2008 CanLII 5628 (ON CCB) For decisions in which the status of an expert report about homœopathy arose, see *Moffat v Warner Goodman & Streat (A Firm)* [2002] EWCA Civ 263; *A & D v B & E* [2003] EWHC 1376. For a decision in which compensation to pay for homœopathic treatment was not permitted, see *Medley v Wadsworth* 56 BCLR (2d) 210; see also WCAT-2004-06864 (Re), 2004 CanLII 68593 (BC WCAT); WCAT-2011-01598 (Re), 2011 CanLII 51026 (BC WCAT).

<sup>74</sup> See *About Dr Marisa Viegas*, <http://www.drmarisaviegas.isonlinehere.com> viewed 7 January 2011.

<sup>75</sup> Lady Waymouth's identity was disguised by the Fitness to Practise Panel but later publicly disclosed.

<sup>76</sup> A full copy of the decision can be found at <http://www.casewatch.org/foreign/viegas/2007.shtml> viewed 7 January 2012.

did not take any, or any adequate, steps to communicate with Lady Waymouth's general practitioner or her cardiologist to ensure that they were advised as to the changes in treatment she was recommending. It also found that she gave advice by email or telephone which she knew was contrary to the advice given and treatment prescribed by Lady Waymouth's treating doctors. Dr Viegas urged Lady Waymouth to discontinue the prescribed drugs (Digoxin and Candesartan) and instead to use homœopathic remedies. For instance, on 23 August 2004 she advised: "She just cannot take ANY drugs – I have suggested some homeopathic remedies."

Lady Waymouth did as recommended by Dr Viegas, stopped the prescribed drugs, and developed heart failure that necessitated re-hospitalisation. She died a week later of cardiac arrhythmia. The cause of her death was recorded by the Salon de Provence Hospital where she passed away as "acute heart failure due to treatment discontinuation".<sup>77</sup>

The Panel found that Dr Viegas' conduct contributed to Lady Waymouth's death and that her conduct was "inappropriate, unprofessional, not in the best interests of [her patient] and irresponsible".

The Panel determined that Dr Viegas's fitness to practise was impaired by reason of her misconduct and suspended her registration for 12 months, advising that at a review hearing at the expiration of 12 months she should provide evidence that she had developed full insight into her actions and understood the gravity of her misconduct so that she was not at risk of repeating the behaviour. Dr Viegas did not appeal the decision of the Panel.

When the Panel reconvened on 11 June 2008,<sup>78</sup> Dr Viegas was unrepresented. She informed it that she had reviewed her clinical records and was of the view that she had been the victim of a miscarriage of justice. She said that in the same circumstances she would behave in the same way. Accordingly, the Panel concluded that Dr Viegas remained a risk to the community and that there was no indication that she had gained any insight. It ordered her name to be erased from the medical register.<sup>79</sup>

### THE CIVIL ACTION AGAINST DR PATEL (INDIA): 1996

In *Verma v Patel* 1996 AIR 2111, 1996 SCC (4) 332 JT 1996 (5) 1 1996 SCALE (4) 364<sup>80</sup> the Supreme Court of India (Ahmad Saghir S and Kuldip Singh JJ) was required to rule on a claim brought in negligence against a homœopath, Dr Patel, who treated a person with strong antibiotics on his diagnosis of viral fever and typhoid fever without confirming the diagnosis by blood test or urine examination. Dr Patel made the diagnosis on the basis of the prevalence of such fevers in the community at the time. The patient's condition deteriorated and Dr Patel admitted him to a nursing home and had him placed on a glucose drip without ascertaining his level of blood sugar by a blood test. When his condition worsened further, the patient was admitted to a hospital but shortly thereafter he died. His wife sued for damages.

A report from a board of doctors appointed by the All India Institute of Medical Sciences concluded (at [45]):

It appears most probably that [the patient] had an infection leading to septicemia possibly on a background of hitherto unrecognized diabetes mellitus. He probably suffered from some intracranial complications presumably related to infection and died as a consequence thereof.

The court observed (at [36]-[38], [41]) that, although there are subjects which are studied in common between homœopathic and allopathic students,

it does not mean that a person having studied one System of Medicine can claim to treat the patient by drugs of another System which he might not have studied at any stage. No doubt, study of Physiology

<sup>77</sup> Chancellor A, "A Comment", *The Guardian* (24 August 2007), <http://www.guardian.co.uk/commentisfree/2007/aug/24/comment.alexanderchancellor> viewed 7 January 2012.

<sup>78</sup> For a full copy of the decision see <http://www.casewatch.org/foreign/viegas/2008.shtml> viewed 7 January 2012.

<sup>79</sup> "Through the 'Optimum Function' system of knowledge Dr Marisa Viegas [now] aims to empower you to manage your own healthcare through a greater understanding of yourself": *About Dr Marisa Viegas*, <http://www.drmarisaviegas.isonlinehere.com> viewed 9 January 2012.

<sup>80</sup> Also able to be located at <http://www.indiankanoon.org/doc/611474> viewed at 29 December 2011.



and Anatomy is common in all Systems of Medicines and the students belonging to different Systems of Medicines may be taught physiology and Anatomy together, but so far as the study of drugs is concerned, the pharmacology of all systems is entirely different.

An ailment, if it is not surgical, is treated by medicines or drugs. Typhoid Fever, for example, can be treated not only under the Allopathic System of medicine, but also under the Ayurvedic, Unani and Homœopathic Systems of Medicine by drugs prepared and manufactured according to their own formulate and pharmacopoeia. Therefore, a person having studied one particular System of Medicine cannot possibly claim deep and complete knowledge about the drugs of the other System of Medicine.

The bane of Allopathic medicine is that it always has a side-effect. A warning to this effect is printed on the trade label for the use of the person (Doctor) having studied that System of Medicine ...

A person who does not have knowledge of a particular System of Medicine but practices [sic] in that System is a Quack and a mere pretender to medical knowledge or skill, or to put it differently, a Charlatan.

The court found that Dr Patel had received a Diploma in Homœopathic Medicine and Surgery on the basis of which he was registered as a medical practitioner in 1983. However, it emphasised that this did not entitle him to practise as an allopathic doctor and that it was Dr Patel's ignorance of proper allopathic procedures that led him to be negligent in his practice of medicine.

### **The criminal prosecution of Thomas and Manju Sam (Australia): 2009, 2011**

A criminal prosecution of a homœopath and his wife in New South Wales, Australia, for manslaughter of their daughter has generated considerable disquiet and controversy.<sup>81</sup>

#### ***The facts***

Gloria Mary Thomas was born on 18 July 2001. She died at the age of nine months. Thomas Sam, Gloria's father, was trained as a homœopath with a Bachelor's Degree in Homœopathic Medicine and Surgery from the Mangalore University in India, a Bachelor of Science Degree from the University of Kerala in India and a Master's Degree in Public Health from the University of Western Sydney. He practised as a homœopath in India prior to 1995 and both practised and taught homœopathy in Australia. Manju Sam, Gloria's mother, held a Bachelor's Degree in Physics and a Postgraduate Diploma in Computer Applications. She worked as an administrative assistant with a health fund in Sydney.

The Sams took Gloria to an early childhood health centre on four occasions between 25 July 2001 and 4 October 2001 where her growth and development were assessed as normal. However, when she was taken for assessment on the last occasion, she was observed to have eczema on her face and behind her ears. A nurse advised treatment with sorbolene to moisturise the skin and prevent it from drying out. Six weeks later, when she was taken to the centre, the eczema had spread all over her body, limbs and face. The nurse advised the parents to consult a skin specialist and in the meantime advised the use of baby oil, sorbolene massage and oat bath.

However, the parents elected not to take Gloria to a skin specialist but late in the year Thomas Sam contacted his uncle who was a homœopath living in the United States, telling him that Gloria had been diagnosed as suffering from "extensive atopic dermatitis with nutritional imbalance". His uncle advised that particular homœopathic supplements should be given to her. Thomas Sam did as recommended.

Gloria was not taken to a medical practitioner until Manju Sam took her to the general practitioner, Dr Goyal, at whose practice Thomas worked as a homœopath. Thomas Sam was present for part of the consultation. Dr Goyal considered Gloria's rash to be serious and warranting referral at the earliest opportunity to a specialist dermatologist. He gave evidence that he considered it to be "one of the most serious rashes I have seen". Dr Goyal did not see Gloria again and, contrary to his advice, her parents did not take her to a dermatologist. Photographs of Gloria taken on 15 and 16 January 2002 depicted large areas of very red and elevated skin on Gloria. She was visibly upset.

<sup>81</sup> See *What's the Harm: Gloria Thomas Sam*, <http://www.youtube.com/watch?v=s8XYUixuw8g> viewed 26 December 2011.



On 7 February 2002 Gloria was taken by her parents to the early childhood health centre where it was observed that she had lost 200 gm of weight over the preceding three months. The nurse considered that this indicated a substantial lack of growth and informed the parents of her concerns. Gloria was crying and was so uncomfortable that the nurse could not complete her examination. The nurse saw severe eczema on Gloria, expressed concern about her health and urged the parents to take her to a skin specialist at the Prince of Wales Hospital. She told them that she believed Gloria's lack of growth was due to the need for her body to divert energy to fighting the eczema and arranged for them to see a paediatrician at the centre.

This consultation took place the following day. The paediatrician observed severe eczema and that Gloria appeared to be unhappy and was scratching. He advised that some simple hygiene steps be taken and advised the continued use of sorbolene cream, cod liver oil and Sigmacort, a cortisone ointment. He was unaware of the benefit, if any, of the homœopathic treatment which they were applying. He advised Gloria's parents to consult a paediatric skin specialist.

The paediatrician saw Gloria again on 19 February 2002. Her condition had improved and her skin was less red. She appeared to be happier and was laughing.

An appointment was arranged for Gloria's parents to take her to the Sydney Children's Hospital at Randwick on 4 April 2002, the earliest date upon which a paediatric dermatologist was available. However, some days after the appointment was made, the paediatrician was contacted by the parents who indicated that they had decided that Manju Sam and Gloria should travel to India to stay with Manju Sam's parents. Their belief was that this would enable Manju Sam to receive assistance, given the problems being experienced by Gloria. The paediatrician was concerned that this would mean that Gloria would not be seen by the dermatologist and would interrupt Gloria's treatment in Sydney. He expressed unhappiness about the proposed arrangements.

Thomas Sam assured the paediatrician that Gloria would be treated in India by a skin specialist. Manju Sam and Gloria left Australia for India on 23 February 2002. They travelled to Kerala in southern India where they lived for a time with Manju Sam's parents. On 25 February 2002 Manju Sam took Gloria to the Century Hospital in Kerala where she was examined by a paediatrician who observed her to be alert although constantly crying. Her weight gain was inadequate although acceptable but she had widespread dermatitis and eczema. He referred Gloria to a skin specialist at the hospital.

The skin specialist examined Gloria on the same day and observed extensive atopic dermatitis in the form of infantile eczema with candidiasis of the nappy area. He told Manju Sam to avoid allergens and give the child only breast milk or soya bean milk. He prescribed Ampiclox syrup and Loratidine syrup. He also prescribed Ampiclox cream. He advised Manju Sam to bring Gloria in every second day to check her progress.

However, Manju ignored the skin specialist's advice to return and she did not take Gloria to any other conventional medical practitioner before Gloria died. In her record of interview, she said that Gloria's condition had improved. Although Thomas Sam was not in India, he and his wife were in regular telephone contact with each other and Thomas Sam was involved in the decisions with respect to Gloria's wellbeing.

Thomas Sam arrived in India on 5 April 2002. Gloria was still obviously ill with eczema. He suggested that Gloria be examined by Dr Patel, an experienced homœopath who was then 77 years of age. She was first seen by another homœopath who assisted Dr Patel and made the following observation:

There were small eruptions of reddish nature with severe itching and occasionally slight discharge. The child was irritable and had delayed milestones. There was exfoliation of skin, oedematous swelling on legs and the child couldn't bend legs. The child was crying and even slight movements were painful. There was heat sensation in the head. The appetite was good and thirst had increased. It was only fed with breast milk. The child's urine was normal and motion regular. The person who brought the patient also told that the child was given homeopathic medicine, listing Sulphur, Calc carb-30, Thuja-30 (one dose) ... The child was irritable, moaning, sad looking and desired to be carried by someone always.



When Dr Patel saw Gloria, he diagnosed atopic dermatitis and prescribed Lycopodium to be taken for one month. However, he did not see Gloria again.

On 27 April 2002, the family returned to Australia. In his record of interview, Thomas Sam said that Gloria's eczema had deteriorated since 6 April 2002 with her having "a bit of peeling of the skin, leaving a red appearance" with the peeling in the "axilla and the folds ... the underarms, loins and groin". Gloria's general health was "not very good" and she was "probably still declining" and "used to cry ... all the time", "was always irritable" and did not "want to eat much". She was malnourished, her development milestones were delayed, she looked tired and had started "developing grey hairs" when her hair used to be "jet black".

In her record of interview, Manju Sam stated that, as at 27 April 2002, Gloria had a rash on most of her folds, under her arms and in her joints with the skin looking "very very red in the armpits, around the stomach area, on her legs and behind her knees" and "sometimes used to bleed". She stated that she did not clothe Gloria because, if she removed the clothes, it "sticks to her body it can bleed". Although Manju Sam stated that Gloria's condition had improved in India, she said that the rash got worse two or three days prior to returning to Australia.

Distressing evidence from a passenger who saw Gloria on the aeroplane flight from India attested to her being distressed for most of the flight, and screaming constantly in pain.

On return to Sydney, Gloria did not improve. Thomas Sam resumed working and Manju Sam remained at home with Gloria. Gloria was admitted to the Sydney Children's Hospital, Randwick, on 5 May 2002 but in the preceding eight days Gloria was not seen by any doctor or homœopath, aside from her father.

In his record of interview, Thomas Sam maintained that Gloria's condition appeared to be improving. However, by 3 May 2002 she had developed a red rash in the eye and the next day there appeared to be an ulcer in the cornea. He gave her homeopathic medicine, Cineriamaritima, for her eye. He said that on the Saturday night he and his wife were "a bit concerned" as the ulcer was spreading. He said at that time he was tired, both Gloria and his wife were sleeping, with the consequence that he did not take Gloria to the hospital. Gloria's condition further deteriorated on the Sunday and he and his wife decided to take her to the hospital. However, they delayed their trip until Thomas Sam had completed his duties at a church service.

In her record of interview, Manju Sam said that Gloria's skin condition improved upon their return to Australia and she was taking food and solids. She said that she had continued giving Gloria homœopathic treatment. She said that she and her husband had not taken Gloria for medical treatment upon their return to Australia "because we were sort of recovering from jet lag and it was very hot in India, we were very tired, very drained". Although they had discussed taking Gloria to a doctor on 30 April 2002 and her eye had become discoloured by 3 May, deteriorating further the following day, they did not take her to a doctor until going to the hospital on 5 May 2002.

A pathologist who performed an autopsy on Gloria concluded:<sup>82</sup>

[S]he died from disseminated infection which caused, in the agonal stages immediately before death, bleeding from the lungs and airways. The infection developed on a background of chronic eczema and significant protein-energy malnutrition. In summary, Dr Sugo explained that the eczema was accompanied by malnutrition that affected Gloria's immunity, and she experienced disseminated infection throughout her entire body which caused her lungs to bleed which led to her death.

While there was some debate among medical witnesses concerning the precise condition or conditions from which Gloria suffered at the end of her life, including as to whether she suffered from kwashiorkor, a condition usually seen in malnourished children in third world countries, Johnson J (for the purposes of sentencing) found:<sup>83</sup>

- (a) Gloria was growing and meeting her developmental milestones until eczema manifested itself in October 2001;

<sup>82</sup> *R v Sam (No 18)* [2009] NSWSC 1003 at [100].

<sup>83</sup> *R v Sam (No 18)* [2009] NSWSC 1003 at [110].



- (b) from October 2001 until her death in May 2002, Gloria consistently suffered from eczema, which was treated ineffectively, and thus persisted in an obvious form;
- (c) Gloria's system utilised energy from her food intake to fight the eczema, rather than to assist her own growth and development so that she failed to meet developmental milestones – this fact was known to the Offenders, with them also being aware by 8 February 2002 of the energy-sapping process involving diversion of energy to fight the eczema;
- (d) the ongoing effects over the months upon Gloria, her skin, weight, development and behaviour were obvious for the Offenders to see;
- (e) the failure to provide proper and effective medical treatment over a period of time led to the development of conditions in Gloria, certainly in the period 27 April 2002 to 5 May 2002 (if not before) which were life threatening, if not properly treated;
- (f) by 5 May 2002, Gloria's condition was such that the administration of medical treatment to her could not save her life;
- (g) Gloria's body was worn down, and ultimately worn out, so that she was susceptible to serious infection;
- (h) the infection which killed her was the final step in a series of events involving the deterioration of Gloria's health because of the failure to obtain appropriate medical treatment for her eczema – it was the final domino to fall.

Gloria died of septicaemia (*pseudomonas aeruginosa*), with antecedent causes being the combined effects of chronic eczema and malnutrition. The infection entered her blood stream either through her infected skin or infected eye.<sup>84</sup>

### The trial

Thomas and Manju Sam were charged with the manslaughter by gross criminal negligence of their daughter. At trial there was extensive dispute about the legal directions that should be given to the jury by the judge about the “reasonable person test”.<sup>85</sup> In *R v Sam (No 18)* [2009] NSWSC 1003 Johnson J held (at [5]-[6]):

[M]anslaughter by criminal negligence involved an omission on the part of each Offender to obtain appropriate medical treatment for Gloria in the period 27 April 2002 to 5 May 2002, without the requirement to establish an intention to cause death or really serious bodily harm, but in circumstances which involved such a great falling short of the standard of care which a reasonable person would have exercised, and which involved such a high risk that death or grievous bodily harm would follow that the doing of the act merited criminal punishment: *Nydam v R* [1977] VicRp 50; [1977] VR 430 at 445; *The Queen v Lavender* [2005] HCA 37; (2005) 222 CLR 67 at 75 [17], 87-88 [60], 90 [72].

The offence of manslaughter by criminal negligence can be established even if each offender had not realised that he or she was exposing Gloria to the risk of injury which would have been foreseen by a reasonable person in the position of the offender. The test is whether a reasonable person, in the position of each offender, would have realised that the risk existed.

Johnson J concluded (at [132]):

[T]his is a most serious case of manslaughter by criminal negligence. I am satisfied that Gloria's condition, certainly by 27 April 2002, was clearly serious and demanded proper medical treatment and that this was obvious to any reasonable parent.

He rejected the contention that it was a case of a child suffering from a serious condition which was disguised in some way: “Gloria's body had been racked by eczema for a considerable period of time with associated pain and discomfort” (at [132]).

He found that Gloria was subjected to significant pain over a lengthy period, and that the omission of her parents to seek proper assistance for her “may be characterised accurately as cruelty. Gloria suffered helplessly and unnecessarily while suffering from a condition that was treatable” (at [133]).

Johnson J accepted the Crown submission that Gloria's parents preferred homœopathic measures to conventional medical treatment for Gloria. He found that Thomas Sam “displayed (and continued to

<sup>84</sup> *Sam v The Queen* (2011) 206 A Crim R 67; [2011] NSWCCA 36 at [35].

<sup>85</sup> See *R v Sam (No 17)* [2009] NSWSC 803.





display) an arrogant approach to what he perceived to be the superior benefits of homeopathy compared with conventional medicine” (at [134]). He found that Manju Sam was of a deferential disposition and tended to acquiesce in what her husband said, being intimidated by her husband’s arrogance and grandiosity. However, he emphasised (at [135]) that the failure of both parents to respond in a timely fashion, or at all, to Gloria’s serious condition was completely unacceptable: “Gloria was totally dependent upon her parents complying with their clear duty of care for her, and each offender fell profoundly short of their parental obligations to their infant daughter.”

For the purpose of imposing sentence, Johnson J characterised (at [137]) the case of Thomas Sam as

a most serious offence of manslaughter, applying the “*reasonable parent*” test. He was a parent, who also happened to be a homeopath, and thus possessed the advantage of training and knowledge flowing from that qualification. This aspect serves to aggravate the seriousness of his offence by reference to the “*reasonable parent*” test.

It was argued by the prosecution that Thomas Sam failed not only by reference to the test of being a reasonable parent but also by reference to the “reasonable homœopath”. Johnson J accepted the argument, observing that the only constant homœopath or medical practitioner in Gloria’s life between October 2001 and May 2002 was her father. While various medical practitioners were consulted by Gloria’s parents, “there was no follow through. Nor was there consistent homeopathic treatment provided to Gloria throughout this period by any person, other than by Thomas Sam” (at [138]).

Johnson J pronounced himself satisfied (at [139]) that Thomas Sam

had regular opportunities to observe Gloria, and to form a view concerning treatment which ought be given. The Offenders had in their possession a range of medical and homeopathic treatments, which had been accumulated from different sources.

He found a clear homœopath-patient relationship to exist during the relevant period and that the treatment provided was cursory and grossly inadequate (at [140]).

Johnson J noted (at [141]) that the view of all homœopaths who gave evidence at the trial was that:

homeopathic treatment could be tried for a period but, if there was no improvement, medical assessment was necessary. Each witness emphasised that homeopathy complemented conventional medicine, and was not intended to be a substitute for the treatment of conditions which called for conventional medical assessment and treatment. This was the professional standard which applied to Thomas Sam in Australia, a standard which he clearly breached in a grave respect. On any reasonable view, the time when homeopathy had been tried without success, and that consistent conventional medical treatment was required, was the visit to Dr Goyal on 11 January 2002. It was overwhelmingly clear that homeopathy would not suffice for the state of affairs which was apparent by 27 April 2002.

Accordingly, he found that Thomas Sam should be approached upon the basis that he was culpable with respect to both the “reasonable parent” test and the “reasonable homœopath” test.

### **The sentencing**

Johnson J concluded that both Thomas and Manju Sam had “limited insight into their offences which bears upon the question of contrition and remorse”. He took into account a psychological report which stated that the Sams “tell me they feel frustrated that they lost their child (Gloria) and they are being blamed for it, and they find that hard to bear, given their deep grief at the death of their daughter”. He concluded that Manju Sam has developed “some insight into the nature of her offence, but that Thomas Sam continues to see the blame for his daughter’s death lying with others” (at [159]).

He determined (at [154]) that the sentence to be imposed upon Thomas Sam needed to reflect an element of general deterrence “directed to alternative health providers who may fail to ensure a patient receives conventional medical treatment where the patient is not responding appropriately to alternative treatment”.

Johnson J was at pains to emphasise that the decision of the jury and the sentence that he was imposing were not on homœopathy itself (at [158]):

The verdicts and sentences in this case do not involve some adverse judgment on the practice of homeopathy. The evidence reflected that homeopathy has a significant role to play in the community, as

a complement to conventional medicine, for a range of conditions. However, the unanimous view of homeopaths who gave evidence at the trial was that the limitations of homeopathy must be kept in mind, and that referral to medical practitioners was both appropriate and necessary where improvement was not manifest from homeopathic treatment. This case does not concern the failure of homeopathy.<sup>186</sup> Rather, it concerns the gross criminal negligence of two parents who failed to ensure that their infant daughter received necessary and appropriate medical care and attention for a treatable condition.

Johnson J sentenced Thomas Sam to eight years' imprisonment with a non-parole period of six years and Manju Sam to five years and four months with a non-parole period of four years.

### **The appeal**

In *Sam v The Queen* (2011) 206 A Crim R 67; [2011] NSWCCA 36 both Thomas and Manju Sam appealed to the New South Wales Court of Criminal Appeal against their convictions and sought leave to appeal against their sentences.

The Court of Appeal rejected the proposition advanced by the appellants that Gloria had died of an infection she sustained when in India and found that her "condition had been neglected and conventional medicine ignored until her body could no longer resist the infection which led to her death" (at [48]). It found that the trial judge had not erred in his directions about a "reasonable person" and that a direction framed to reflect the cultural background or education of either appellant was not appropriate (at [59]). The court found that the trial judge had been correct to leave the ground in relation to a reasonable homœopath to the jury (at [63]):

The evidence of the homeopathic doctors who gave evidence at the trial was that homeopathy is a complementary treatment to conventional medicine. However, it was not a substitute for it and it was not appropriate for acute conditions nor where the patient's symptoms did not improve but in fact deteriorated.

It also rejected the proposition that the jury's verdicts were unreasonable and unsupported by the evidence. It accepted that the case was not one of complete abandonment of responsibility for the child's welfare leading to death (at [141]):

No doubt the appellants, particularly Thomas Sam believed that homeopathic treatment was appropriate and would ultimately be effective. The evidence indicated that the child's physical symptoms would vary, improving on occasions but then later deteriorating. Yet throughout the child failed to meet developmental milestones and by the time of her death was grossly undernourished.

It commented (at [142]) that the evidence of the parents' refusal to recognise and respond to Gloria's obvious ill health was

confronting. The description by witnesses of the child's condition on the aeroplane from India presents a picture of a child in need of immediate and appropriate medical treatment. That picture is dramatically confirmed by the evidence of the doctors' observations when the child was finally taken to a hospital. And if not entirely persuaded by the witnesses of the extraordinary negligence of the appellants the photographs of the child's body upon admission reinforce the availability of the jury's conclusion. It is true that the appellants were never told that Gloria was so ill that she may die. However, her need for medical care was obvious.

The Court of Appeal observed (at [178]) that the crime of which the appellants were convicted "occurred in circumstances where the child was grossly unwell and suffering in great pain. The failure of the appellants to discharge their obligations to care for her justified their imprisonment." It concluded that the trial judge had been appropriately careful to impose sentences which had proper regard to their circumstances. It granted leave to appeal against sentence but dismissed the appeals against conviction and sentence.

<sup>86</sup> For a statement to a similar effect, see *College des Médecins du Québec v Pavlov* 2004 CanLII 40633 (QC CS) at [16].



## CORONER'S INQUEST INTO THE DEATH OF PENELOPE DINGLE (WESTERN AUSTRALIA): 2011

During 2010 the State Coroner of Western Australia (the coroner) conducted an inquest into the death of Penelope Dingle who died in 2005 as a result of the complications of metastatic bowel cancer.<sup>87</sup> Ms Dingle attended a medical centre in 1999 in company with her husband who was a proponent of natural treatment. By December 2002 she reported rectal bleeding to a doctor at the clinic and was referred for a colonoscopy which showed a large rectal tumour. The coroner observed (p 7) that "It is clear from the above that while the deceased may have been receptive to alternative approaches to medicine, she was not ideologically opposed to mainstream medicine". A colorectal surgeon to whom she was referred recommended that she should have urgent surgery, requiring a temporary stoma, and chemotherapy as the tumour had probably existed for about two years and had gone outside the bowel wall. She expressed concerns about whether she would be able to bear children if she proceeded with this course and did not keep her next appointment with the surgeon. He arranged for follow-up when it became clear that she was opposed to surgery, chemotherapy and radiotherapy for her condition.

At a meeting with a nurse in mid-2003, when presented with statistics about the likely course of her illness, Ms Dingle said that statistics could be manipulated and that there were "good statistics to show that natural therapies also assisted with management of colorectal cancer" (p 14). By August 2003 Ms Dingle advised her general practitioner that she intended to try to treat her condition with supplements and homœopathic treatments (p 16). She had decided to put her trust in two medical practitioners who offered alternative treatments.<sup>88</sup> Her general practitioner formed the view that by September the cancer had entered her bones. Ms Dingle next saw her surgeon in October 2003. She appeared cachectic and her weight was barely 35 kg. She was in severe pain. She was found to have a complete bowel obstruction.

Ms Dingle agreed to surgery and during the procedure it was necessary for her surgeon to remove her cervix and uterus as well as the ovaries and the bowel from the pelvis as well as the fallopian tubes. It was not possible to remove all of the cancer so the procedure was essentially palliative and Ms Dingle was referred then for radiotherapy to try to reduce the mass in her pelvis. The coroner noted (p 19) that Ms Dingle's surgeon

was extremely disappointed as after the initial investigations and assessments it seemed that the deceased had a potentially curable rectal cancer which had been contained within the rectum and was then not invading adjacent structures. He believed that if the deceased had followed the initial treatment course she would have had a good chance of curing her disease.

Ms Dingle died of the effects of cancer on 25 August 2005.

It emerged during the inquest that Ms Dingle received treatment from 2001 from a homœopath, Francine Scrayen. Mrs Scrayen received a Diploma which she said qualified her to work as a homœopath from the Oceanic Institute of Classical Homeopathy in Perth. She also stated that she had obtained a post-graduate certificate in Belgium over a period of three years which involved visits to Belgium and that she had been practising as a homœopath since 1998. She said that she was a member of the Australian Homœopathic Association and was on the Australian Register of Homœopaths. The coroner reviewed extensive documentation that Ms Scrayen told the court was her clinical file. He commented (p 41):

Although Mrs Scrayen stated that she had completed a first aid course with St John Ambulance Service, she stated that it was a "very basic" course and that her understanding of medical issues was relatively poor.

During 2003, Mrs Scrayen's notes showed that she had contact with Ms Dingle on 109 different days until mid-October and that between July and October she interacted with her almost every day. The coroner commented (p 42):

<sup>87</sup> For the full record of the State Coroner's findings, see [http://www.safetyandquality.health.wa.gov.au/docs/mortality\\_review/inquest\\_finding/Dingle\\_Finding.pdf](http://www.safetyandquality.health.wa.gov.au/docs/mortality_review/inquest_finding/Dingle_Finding.pdf) viewed 2 January 2011.

<sup>88</sup> Dr William Barnes offered Ms Dingle intravenous vitamin C treatment and carnivora or venous flytrap treatment which he told her could slow the growth of the cancer (pp 77-78) and Dr Tabrizian provided her with "supplements" (p 89).



[T]he number and extent of these contacts was grossly excessive for any legitimate professional interaction and provided evidence of an increasing unhealthy dependence of the deceased on Mrs Scrayen and her homeopathic remedies and treatments.

From October 2001, Mrs Scrayen's records identified her patient complaining of blood in her stools and from March 2002 pain in her ovaries. Mrs Scrayen formed the view, she told the court, that her patient had a recurrence of haemorrhoids (p 44). She treated Ms Dingle with "plumbum" (lead), which, she informed the coroner, is "manufactured by diluting lead with water so many times that ... there is none of the original lead remaining". Mrs Scrayen stated (p 50): "It's not about the substance, it's about the picture that resonates with the person. There was no affinity with lead, as such, as in pain. It's the picture which Pen presented me with, and that has to fit."

The coroner found (pp 45-46):

Mrs Scrayen should not have continued to treat the deceased without insisting that she see a medical practitioner when she was describing internal bleeding and other concerning symptoms over a period of about twelve months ... a competent health professional would have been alarmed by the developing symptoms and would have strongly advised that appropriate medical investigations were conducted without delay. The problem in this case was that Mrs Scrayen was not a competent health professional.

Documentation of Ms Dingle showed that she had been treated exclusively by Mrs Scrayen during a vital seven-month period during 2003 and had been reassured by her that "classical homeopathy will cure you" (p 47).

Mrs Scrayen claimed that she did not purport to treat Ms Dingle's cancer and that she had no knowledge that Ms Dingle believed that Mrs Scrayen was claiming to be able to cure her cancer. However, in this regard she was not believed by the coroner who regarded her as not being a witness of truth (p 47). In correspondence (unsent) from Ms Dingle to Mrs Scrayen, she recorded Mrs Scrayen's attempts to dissuade her from having surgery right up until October 2003, threatening not to treat her if she submitted to surgery. The coroner commented (p 53):

In my opinion Mrs Scrayen's advising against surgery in these circumstances was an outrageous thing to do. Mrs Scrayen had minimal medical knowledge and was giving dangerous advice on matters in respect of which she had no expertise.

Ms Dingle recorded the advice from Mrs Scrayen that she was overly sensitive to pain, that she should inject olive oil into her anus once a day and insert plugs of velvet soap into her rectum (p 54). The coroner accepted that the "velvet soap" treatment by Mrs Scrayen was an attempt to remove the blockage caused by Ms Dingle's cancerous tumour. He observed that the experience of Ms Dingle highlighted "the dangers associated with persons relying on non-science-based alternative treatments and the importance of placing reliance on reliable information" (p 57). He found that Mrs Scrayen provided Ms Dingle with "false hope". He made the point, though, that the conduct of Mrs Scrayen was not in accordance with the Australian Homoeopathic Association's *Code of Professional Conduct* (p 57).

The coroner noted Dr Dingle's academic position at Murdoch University, his adherence to alternative modes of treatment and his forceful personality. He found (p 75):

After her surgery in 2003 when the deceased realised that her failure to accept [her surgeon's] advice had cost her chances for life, the deceased was highly critical of Mrs Scrayen whom she blamed for misleading her, but she did not similarly blame Dr Dingle. It appears that Dr Dingle was a victim of his own misinformation and did not take the positive actions which would normally be expected of a person in his position to save a loved one from herself.

The coroner noted that Ms Dingle received treatment from a registered general practitioner, Dr Barnes, who prescribed her vitamin C and carnivorin, a phytonutrient (herbal) extract of the venous flytrap plant, *Dionaea Muscipula*. He did not advise her at any time about the unlikelihood of the homoeopathic treatments she was receiving being effective in treating her cancer (p 83). His own nurse prescribed further homoeopathic treatments for her, leading the coroner to conclude that Dr Barnes was supportive of the homoeopathic regime for Ms Dingle. His own treatment for Ms Dingle in 2003 and 2004 cost her approximately \$30,000. Expert evidence suggested that this treatment had no prospect of providing any benefit to her condition (p 85).



The coroner found that the life of Ms Dingle may have been saved had she made different choices (pp 95-96). He commented (p 96):

Mrs Scrayen's influence on the deceased played a major part in her decision making which contributed to the loss. Dr Dingle, her partner insofar as he supported and assisted with Mrs Scrayen's treatments and kept the deceased away from outside influences, contributed to that loss of a chance of survival. Ultimately, however, the decisions were those of the deceased, sadly those decisions were to a large extent based on misinformation.

He considered issues arising from the role of homœopathy in Ms Dingle's death and commented (p 99):

While I do not agree with the proposition that such alternative medical regimes should be outlawed, unless and until their supporters can provide an appropriate and sufficient science base, any apparent legitimisation of these regimes could provide mixed messages for vulnerable and often desperate cancer sufferers. Evidence at the inquest revealed that homeopathic remedies are sold in pharmacies in Western Australia and homeopathic practitioners, such as Mrs Scrayen, have affiliation with private health insurance companies.

In a context where health costs are increasing at an alarming rate and private health insurance companies struggle to meet the full costs of procedures, medications and hospital beds, it is a matter of concern that funds which could be allocated to such fundamental health needs are being allocated to non-science based alternative medicine practitioners.

He referred Drs Barnes and Tabrizian for investigation into their professional conduct to the Medical Board of Western Australia and recommended (p 100) that

the Commonwealth and State Departments of Health review the legislative framework relating to complementary and alternative medicine practitioners and practices with a view to ensuring that there are no mixed messages provided to vulnerable patients and that science based medicine and alternative medicine are treated differently.<sup>89</sup>

and (p 101) that

the Medical Board of Western Australia finalise its document Complementary Alternative and Unconventional Medicine if it has not already done so and take steps to ensure that the document is promulgated to the profession and complied with.

## DISCUSSION

Homœopathy has re-emerged during the last quarter of a century as a significant source of health care. With such a status, and the potential for harm to vulnerable patients from homœopathy and homœopaths, there is an urgent need for reflection and response within the health sector generally, consumer protection authorities, and legal policy-makers about the steps that should be taken to provide community protection from dangerous homœopathic practice. No doubt, the reasons why homœopathy has become popular are multifarious. Many within the community are disillusioned with the business of orthodox medicine and its propensity to treat patients in a technologically oriented, pathology-dominated and site-specific way. Homœopaths pride themselves on their basis in natural and organic treatment, their integrative approach and their preparedness to spend time in a human and humane way with their patients and to listen and respond to a panoply of needs. As well, homœopathy carries a mystique of the abstruse and the recondite. It rejects technological medicine and incorporates treatment of both the body and the mind, invoking holistic images and metaphors that are straightforward and appealing and extolling the consistency of its approach and its history of two centuries of practice.<sup>90</sup>

However, homœopathy is a health discipline deservedly the subject of virulent criticism by orthodox medicine on the basis of its tenets and methodologies being found repeatedly not to conform

<sup>89</sup> Compare the account of *The Lancet's* coverage of an 1836 coroner's inquest which found the deceased had been taking "Morison's pills" in Porter R, *Quacks* (Tempus, Stroud, 2000) p 200.

<sup>90</sup> See eg Bishop, n 53:

Allopathy always managed to impress patients by offering new techniques and the use of the latest instruments. Despite the fact that many of these new inventions did not serve their patients too well, new methods, drugs, etc., promised more advantages just around the corner.



with the scientific principles of evidence-based health service provision. It has always been a controversial approach to health care in the United Kingdom although it has attracted a measure of plausibility, because of its relationship from the earliest days with the aristocracy, and mysticism and also because of its ongoing affiliation with the monarchy. However, concerns have latterly been raised in many parts of the world about whether its claims as an efficacious health modality have any potential to be scientifically justified. Bizarre alleged “provings”, such as those related to the Berlin Wall, have particularly alienated those of a scientifically rigorous disposition.

A series of decisions in different legal forums have corroborated and exacerbated the concerns. From the perspective of the law, given homœopathy’s bizarre and scientifically indefensible bases, the question arises as to whether any representations of its efficacy (save those overtly dependent upon the placebo effect) could be other than false, misleading and deceptive (an issue under consumer law) and an attempt to obtain financial advantage by deception (an issue under criminal law).

For good reason, homœopathy has latterly attracted a number of high-profile forms of censure, most notably the criticism of the Science and Technology Committee of the House of Commons. In Australia the issue has become controversial, too, after the publication of a significant article in the *Medical Journal of Australia*<sup>91</sup> and the National Health and Medical Research Council (NHMRC) undertaking an investigation into the scientific status of homœopathy. In 2011 it announced that it was “finalising a statement on homeopathy for health practitioners, that has been adapted for the Australian context from a 2010 report by the UK House of Commons Science and Technology Committee”.<sup>92</sup> Subsequently it was reported to have published a draft statement (intended for internal circulation) which stated:<sup>93</sup>

[I]t is unethical for health practitioners to treat patients using homeopathy, for the reason that homeopathy – as a medicine or procedure – has been shown not to be efficacious ... There is sufficient scientific evidence to conclude that homeopathy is no more efficacious than placebo. Homeopathy, while not harmful in its own right, may pose a risk to patients if safe and efficacious conventional treatments are rejected or delayed in favour of homeopathic treatments.

A commentator observed that such a position could have many repercussions:

If the public statement is formally adopted by the Council, the major health insurers – Medibank Private, HCF, NIB and MBF – will have to justify why it is [sic] using taxpayers’ money to fund “unethical” homeopathic treatments. All four insurers, which receive a substantial portion of the \$3 billion annual private health insurance rebates paid by the Commonwealth, offer their members funding for homeopathy. MBF also pays for iridology and reflexology.<sup>94</sup>

The NHMRC subsequently announced that it proposed to conduct a “comprehensive literature search to supplement its review [to] ensure that all relevant research is included and that appropriate consultation can occur”. To that end it has established the Homeopathy Working Committee to oversee the work, with the expectation that the NHMRC will produce an official position statement by June 2013 after consultation with relevant bodies including the Australian Homœopathic Association and the Australian Medical Fellowship of Homeopathy.<sup>95</sup>

Many migrants came from countries where the industrial age was prevalent; therefore the concept of dividing the body into different parts and treating it with a more mechanical approach was easily accepted. As such, this approach denied the vital principle.

Times have changed, many patients now prefer to be treated holistically and a change of opinion about medical treatment has taken place. So it is not surprising that Homœopathy is on the rise again. After all, it has stood the test of time with its unchanged principles.

<sup>91</sup> Ernst E, “Homeopathy: What Does the ‘Best’ Evidence Tell Us?” (2010) 192(8) MJA 458.

<sup>92</sup> NHMRC, *Homeopathy*, <http://www.nhmrc.gov.au/media/newsletters/research-tracker/2011/nhmrc-research-tracker-21-april-2011-edition> viewed 18 February 2012..

<sup>93</sup> Smith P, “NHMRC Declares: Homeopathy not ‘Efficacious’”, *Australian Doctor* (11 May 2011).

<sup>94</sup> Smith, n 93.

<sup>95</sup> See Smith P, “NHMRC Delays Advice on Homeopathy”, *Australian Doctor* (13 February 2012); Australian Government,



The legitimacy of the discipline has been formally confronted in the Czech Republic by the medical profession, although ultimately a constitutional challenge in the European Court of Human Rights meant that no definitive resolution of the dispute was achieved.

The decision of the Indian Supreme Court in *Verma v Patel* 1996 AIR 2111, 1996 SCC (4) 332 JT 1996 (5) 1 1996 SCALE (4) 364 did not reflect adversely on the discipline of homœopathy per se but served to emphasise the need for (all) health practitioners to confine themselves within their areas of expertise and competence – the consequence of failing to do so being foreseeably tragic and fatal. The decision of the United Kingdom Fitness to Practise Panels of the General Medical Council in relation to Dr Viegas and also of the New South Wales courts in relation to Thomas and Manju Sam and of the Western Australian State Coroner in relation to the death of Penelope Dingle raised another issue. When complementary practitioners become captured by the idea that their perspective on health service provision is superior to, and a complete alternative to, conventional medicine, the result can be a repudiation of efficacious forms of mainstream treatment and the death of patients who have invested their trust (and their money, sometimes substantial amounts of it) in “false hope”. Such an attitude by practitioners purporting to be complementary is reprehensible because of the obvious risks that it runs for patients and the fact that while health practitioners are (or should be) positioned to provide relevant information to patients enabling the exercise of informed choice, without the provision of such information, many patients may rely to their detriment upon complementary health practitioners. In the *Patel*, *Viegas* and *Dingle* cases, arrogant, intransigent and ignorant adherence to homœopathic remedies resulted in unnecessary deaths because the practitioners concerned were not willing to facilitate patient access to Western medicine in a timely way. The practitioners’ conduct was not complementary – it was simply wantonly unscientific and disgraceful. The message from the disciplinary context in the United Kingdom, the criminal context in New South Wales and the coronial context in Western Australia was the same: complementary medicine practitioners must not usurp their patients’ entitlements to access orthodox (or allopathic) health care. They must at least practise within their limitations, they must function as an adjunct to other forms of health care and they must not purport to do that which they cannot do.

It is important to acknowledge three points. First, it is not fair to extrapolate broadly from small numbers of cases that have come before the courts – no profession should be judged by the worst of its practitioners.<sup>96</sup> Secondly, many aspects of Western medicine have not been able to stand up to a full scientific analysis of their underpinnings. Thirdly, a betrayal of patient trust by a homœopath’s failure to refer them to a more suitable (allopathic) health practitioner is a breach of many codes of conduct for homœopaths.<sup>97</sup>

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Department of Health and Ageing, *Homeopathy*, <http://www.health.gov.au/internet/main/publishing.nsf/Content/currentissue-P11000021> viewed 18 February 2012.

<sup>96</sup> This highlights the need to identify with accuracy the numbers and profiles of cases in which homœopathy patients have died when they would not have done/might not have done, had they received mainstream medical treatment, and to ascertain the role of homœopaths in their patients’ decisions not to seek mainstream treatment.

<sup>97</sup> See eg Australian Homœopathic Association, *Code of Conduct* (2001): “Members shall refrain from employing, offering or undertaking work or advice beyond their professional competence” (at [1.5]); “Where there is evidence of a problem or a condition with which the member is not competent to deal, it is essential that this be made clear to the patient and that the patient is referred to an appropriate practitioner” (at [2.7]); “Members shall fulfil their duty of care towards their patients, and shall provide or refer their patients to any available treatment that would be deemed necessary or beneficial by any competent homœopath” (at [2.13]), <http://www.homeopathyoz.org/downloads/codeofconduct.pdf> viewed 8 January 2012; Canadian Society of Homeopaths, *Codes of Conduct and Practice*: “The homeopath shall recognize his/her own limitations in the treatment and prevention of disease and shall discuss other options for treatment with the patient when deemed appropriate” (at [1.6]), [http://www.csoh.ca/PS\\_Codes.pdf](http://www.csoh.ca/PS_Codes.pdf) viewed 8 January 2012; The Society of Homeopaths (UK), *Code of Ethics and Practice* (2010): “Respect the skills of other health care professionals and where possible work in cooperation with them” (at [1.14]); “Registered and student clinical members will be aware of the limits of their professional competence and where appropriate, will refer to other practitioners ensuring that the practitioner to whom they refer is suitably qualified” (at [16]), [http://www.homeopathy-soh.org/attachments/CodeofEthics\\_April10.pdf](http://www.homeopathy-soh.org/attachments/CodeofEthics_April10.pdf) viewed 8 January 2012.



However, the sequence of courts' decisions in England, New South Wales and Western Australia demands a constructive response from those who seek to protect vulnerable members of the community against dangerous decision-making by health practitioners, as well as from the profession of homœopathy itself.

The *Viegas*, *Sam* and *Dingle* decisions, especially in the context of the recommendations of the Science and Technology Committee, place a heavy burden on homœopathy to justify why it should remain a health discipline that qualifies for health insurance<sup>98</sup> (to which all who are insured contribute by payment of their premiums) and in the United Kingdom for NHS benefits. The eligibility of homœopathy for insurance benefits can plausibly be said to communicate a message to persons who are insured that the discipline can contribute constructively, at least in some circumstances, to therapeutic outcomes.

However, they do more. The profession aspires to credibility via registered status in many countries. In Australia, for instance, it has been lamented that:

the profession is operating under a system of "self regulation" with government endorsed competency standards in homœopathy, and a national registration system established by the profession. However, there are no statutory regulations controlling the practice of homœopathy by individuals, or protection of the title of "homœopath". Unfortunately this means that currently anyone can legally call themselves a homœopath, although health insurers will only acknowledge the services of registered practitioners for the purposes of rebates on homœopathic consultations.<sup>99</sup>

In 1994 the Australian Health Ministers Advisory Council<sup>100</sup> adopted six criteria that are to be applied when examining the case for regulation of unregulated health occupations:

1. Is it appropriate for Health Ministers to exercise responsibility for regulating the occupation in question, or does the occupation more appropriately fall within the domain of another ministry?
2. Do the activities of the occupation pose a significant risk of harm to the health and safety of the public?
3. Do existing regulatory or other mechanisms fail to address health and safety issues?
4. Is regulation possible to implement for the occupation in question?
5. Is regulation practical to implement for the occupation in question?
6. Do the benefits to the public of regulation clearly outweigh the potential negative impact of such regulation?

Given the risks that homœopathy poses, as evidenced by the cases referred to above, the second of these criteria is assuredly fulfilled. This is important in terms of managing the dangers of homœopathy that such cases illustrate. However, a real question that arises is whether, given the extraordinary bases of Hahnemann homœopathy, it could ever be capable of joining other registered health professions that rely upon a scientific basis for regulation and thus whether regulation is possible or practical for the profession. Until such time as homœopathy can scientifically justify its fundamental tenets, which seems inconceivable by measures such as objective peer review, double blind testing and proper replication of processes and outcomes, it cannot be said that its claims for therapeutic efficacy can be justifiable. This leaves the profession not just exposed to criticisms, such as were enunciated in the cases referred to above, but potentially open to consumer protection actions directed toward whether its representations are false, misleading and deceptive, to civil litigation when its promises have not been fulfilled, and especially when persons have died, and to criminal actions in respect of the financial advantage that is obtained by its practitioners from their representations.

The distressing cases referred to here which led to avoidable deaths and the multiple accusations levelled against homœopathy require of the profession at least a formal repudiation of the practitioners concerned and of those with a similar approach to health care. In addition, they demand an unequivocal response that homœopathy will discipline its own in a robust and open way. If the

<sup>98</sup> In Australia, remarkably, most private health funds provide some cover for homœopathic consultations and/or medicines: see *Australian Association of Professional Homeopaths*, [http://www.homeopathy.org.au/health\\_funds.html](http://www.homeopathy.org.au/health_funds.html) viewed 12 January 2012.

<sup>99</sup> Torokfalvy and Armstrong, n 50.

<sup>100</sup> See Australian Health Workforce Online, <http://www.ahwo.gov.au/hwpc-pracreg-sub.asp> viewed 6 January 2012.





profession is to acquire any scientific credibility, which is difficult to conceive of, the deaths to which homœopathy has contributed, as described in this column, also require that homœopathy actively generate a defensible research basis that justifies its claims to efficacy of outcome for its patients. It is only then that the claims of the medical establishment that homœopathy is a dangerous and too often a lethal form of quackery will be able to be contested rationally. In the meantime, it is timely to consider further the status that homœopathy has within the general and health care communities and whether that status can be scientifically, ethically or legally justified.

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