

# MEDICAL PRACTITIONERS BOARD OF VICTORIA

**Re: Dr Abraham Stephanopoulos [2006] MPBV 12**

## **Reasons for Decision**

- Before:** Dr I Freckelton, Chairman  
Dr H Mukhtar  
Mr I Russell
- Appearances:**
- Assisting the Panel:** Ms S L Hinchey of Counsel instructed by Minter Ellison, Lawyers
- For the Practitioner:** Mr T Forrest QC and Mr J Noonan SC instructed by John W Ball & Sons, Solicitors
- Date of Hearing:** 9 December 2005, 16 December 2005, 28 April 2006, 3 May 2006, 14 June 2006
- Date of Decision:** 16 August 2006

### **Finding:**

Dr Stephanopoulos engaged in unprofessional conduct of a serious nature, namely professional misconduct within the meaning of section 3(1)(c) of the *Medical Practice Act 1994* ("the Act"), as well as unprofessional conduct within the meaning of section 3(1)(h)(i) by reason of having been convicted by the Magistrates' Court of Victoria at Dandenong on 26 July 2005 of three indictable offences of knowingly possessing child pornography contrary to sub-section 70(1) of the *Crimes Act 1958* (Vic).

### **Determinations:**

- (1) Pursuant to section 45A(2)(c) of the Act, Dr Stephanopoulos is reprimanded for engaging in criminal and unethical conduct of a kind that has brought serious discredit upon the profession of medicine.
- (2) Pursuant to section 55 of the Act, the current suspension of Dr Stephanopoulos' medical registration is removed.
- (3) Pursuant to section 45A(2)(e) of the Act, the following conditions are imposed on Dr Stephanopoulos' medical registration:
  - (A) that he not provide treatment as a medical practitioner to persons under the age of 18 years before 1 January 2015 and thereafter only if so permitted by the Medical Practitioners Board of Victoria after receipt of reports from the Director of Medical Services or other senior practitioner approved by the Board at his workplace and his treating psychiatrist that such an extension to his practice would be safe;
  - (B) that until 16 August 2016 he demonstrate each year by statutory declaration forwarded to the Chief Executive Officer of the Board by

not later than 30 May that he has continued to co-operate with and receive treatment from Dr Glaser or his nominee (or in default of such nomination, such practitioner as is nominated by the Board) as recommended by Dr Glaser or his nominee (or the Board-nominated practitioner).

- (4)** Pursuant to section 45A(2)(g) of the Act, Dr Stephanopoulos' medical registration is further suspended from 17 August 2006 until 1 March 2007, this extending a suspension that effectively commenced on 9 November 2004 when he formally agreed with the Board to cease clinical practice.

## **SUMMARY OF FINDINGS AND DETERMINATIONS**

The Panel has found that the conduct of the medical practitioner, Dr Stephanopoulos, a neurosurgical trainee nearing the end of his training period, in downloading and storing large amounts of child pornography constitutes professional misconduct and unprofessional conduct of a serious nature. These are very serious adverse findings. The conduct of Dr Stephanopoulos is abhorrent from the perspective of contemporary community values. Although he did not pay for the images that he collected and although he procured them from free sites on the Internet, by his addiction to such material between March and June 2003 he provided encouragement to the producers and purveyors of illegal material that violates the innocence of children. As a consumer of their product, he has taken his place in the chain of their criminality.

As of 9 November 2004 Dr Stephanopoulos agreed to refrain from patient contact. On 26 July 2005 he was sentenced by the Dandenong Magistrates' Court to a jail term of 5 months imprisonment, wholly suspended for a period of 15 months. From 15 September 2005 his registration was suspended by this Board.

The role of a Panel of the Medical Practitioners Board is not to punish a person who has breached the criminal laws of Victoria. That is the responsibility of the criminal courts. The Panel's role is to take such measures as are necessary to protect the public and to uphold the standards and standing of the profession of medicine. This is a difficult balancing exercise in a case such as this where the practitioner presents as otherwise unblemished and as a doctor with enormous potential to benefit the community, yet has committed serious criminal offences which legitimately prompt grave community concern.

It would be only in rare circumstances that a Panel of this Board would contemplate permitting a medical practitioner convicted of possession of child pornography to return to practice. Ultimately, it has concluded in this particular case that such circumstances have been established.

Compelling expert evidence from eminent mental health professionals in the area of sex offending has been made available to the Panel. It is uncontradicted. The views of these practitioners are that Dr Stephanopoulos is not a paedophile and that there is a "very low risk" of him re-offending. The professional misconduct of Dr Stephanopoulos occurred in the context of dysfunctional responses to stress and work pressure. Dr Stephanopoulos gave substantial sworn evidence to the Panel and the experts called on his behalf were cross-examined at length.

Dr Stephanopoulos satisfied the Panel that he has a sophisticated insight into what brought about his criminal behaviour, its seriousness, its ramifications for child victims and the damage that he has done to the standing of his profession by his conduct. The view of the experts who appeared to assist the Panel is that by the measures which he has set in place under professional guidance, he has made substantial progress in his self-initiated rehabilitation. They have asserted without reservation that there is adequate protection for the public against Dr Stephanopoulos relapsing and re-offending. Thus far the measures put in place have been successful and Dr Stephanopoulos has been responsive to all recommendations made to him by mental health professionals. He understands that any further inappropriate behaviour on his part would be overwhelmingly likely to lead to his medical registration being cancelled.

The determinations of the Panel extend the suspension of Dr Stephanopoulos until 1 March 2007 and stop him treating any persons under the age of 18 years until July 2015. Thereafter, he will only be permitted to treat persons under the age of 18 if expressly permitted to do so on the basis of expert evidence placed before the Medical Practitioners Board of Victoria. Further, he is obliged until 2016 to remain in the care of a psychiatrist so as to ensure that he continues to implement relapse prevention strategies designed to ensure that he does not repeat any socially unacceptable behaviour. Whether Dr Stephanopoulos is permitted to complete his training as a neurosurgeon will be a matter for the Royal Australasian College of Surgeons after the period of suspension imposed by the Panel of this Board has expired.

[1] The Panel convened in a panel of three to undertake a formal hearing into the conduct of Dr Stephanopoulos, in particular, to determine, on the basis of a notice of hearing, whether he had engaged in “unprofessional conduct” within the meaning of s3 of the *Medical Practice Act 1994* (Vic) (“the Act”) in that he knowingly possessed child pornography and was found guilty by the Magistrates’ Court of Victoria at Dandenong on 26 July 2005 of three indictable offences of knowingly possessing child pornography contrary to sub-section 70(1) of the *Crimes Act 1958* (Vic).

### **PARTICULARS**

- (a) Between on or around 7 March 2003 and 21 June 2003, at Monash Medical Centre in Clayton, where he worked as a Neurosurgical Registrar, he knowingly possessed computer photographs which depicted a minor under or apparently under the age of 16 years engaging in sexual activity or in an indecent sexual manner or context.
  - (b) Between on or around 26 May 2002 and 11 July 2003, at Armadale, he knowingly possessed computer photographs which depicted a minor or child apparently under the age of 16 years engaging in sexual activity or in an indecent sexual manner or context.
  - (c) On 11 July 2003, at Armadale, he knowingly possessed computer photographs, in his vehicle, which depicted a minor under or apparently under the age of 16 years engaging in sexual activity or in an indecent sexual manner or context.
- [2] On 4 October 2004 the Board was notified that Dr Stephanopoulos had been charged with offences related to possession of child pornography.
- [3] The Panel was provided with the police brief against Dr Stephanopoulos. It established that Dr Stephanopoulos was employed at the relevant time as a Neurosurgical Registrar at the Monash Medical Centre in Clayton. His position allowed him to have access to a computer in an office on the Neurosciences ward. He gained access to the room via a key. The computer inside the room was provided for his use and that of a small group of other registrars.
- [4] On 4 July 2003, police received a complaint from a staff member that the registrars’ computer contained pornographic images, some of which depicted young children. This came to light as a result of the repeated appearance of a pornographic image on the computer.
- [5] Police attended at the office, seized and then analysed the hard disc of the computer. Information obtained showed that Dr Stephanopoulos was the only person who had access at all times to the computer. The images of child pornography were ascertained to have been stored on the computer’s hard drive in folders created between 7 March and 21 June 2003.
- [6] As a result of these inquiries police obtained a search warrant and executed it at the residence of Dr Stephanopoulos on 11 July 2003. They seized his home computer and a variety of discs. When analysed, the content revealed

a further large quantity of pornography, including child pornography. Part of what was found were five short movie clips downloaded from the Internet.

- [7] Police officers also searched the motor vehicle of Dr Stephanopoulos. They located a CD Rom which contained 44 child pornography images.
- [8] Analyses conducted by the police of all materials seized from Dr Stephanopoulos disclosed some 26,000 JPEG files, which contained pornographic images, including approximately 1,405 pictures, 175 web pages and 5 movie files that contained child pornography. There was a level of duplication in the child pornography material between the computers at work and home and the disc found in his car.
- [9] On 1 November 2004 Dr Stephanopoulos wrote to the Board informing it that he had graduated from Monash University in 1995 and was then in his third year of five years advanced accredited training in neurosurgery overseen by the Royal Australasian College of Surgeons. He stated that he had resigned from the Monash Medical Centre. He informed the Board that he was undertaking his non-clinical year, undertaking research into cranial shunt infections. In addition, he was undertaking study for a Masters degree in Bioethics through Monash University. He was planning to recommence his clinical work in February 2005 as a Neurosurgical Registrar treating adult patients. He emphasised that he would not be treating any paediatric patients, having completed that component of his training. Dr Stephanopoulos stated that he was not performing any clinical work.
- [10] On 9 November 2004 Dr Stephanopoulos formally agreed pursuant to s27(5) of the Act to alter his practice by refraining from having any professional contact of any kind with any patient from that date until the conclusion of the Board's investigations into his conduct. To this date, his cessation of clinical contact with patients therefore numbers 21 months.

### **The Convictions**

- [11] On 26 July 2005 Magistrate Batt at the Dandenong Magistrates' Court convicted Dr Stephanopolous of 3 counts of knowingly possessing child pornography contrary to section 70 of the *Crimes Act 1958* (Vic). He sentenced him to five months imprisonment which he wholly suspended for 15 months and fined him \$5,000. Magistrate Batt ordered Dr Stephanopolous to submit to forensic sampling, ordered the computers and discs to be forfeited and destroyed and noted that he had been sentenced to a registrable offence pursuant to the *Sex Offenders Registration Act 2004* (Vic).
- [12] On 15 September 2005 Dr Stephanopoulos was notified of the Board's decision to conduct a formal hearing into his conduct and of the Board's decision to suspend his registration from that date onwards.
- [13] On 14 June 2006 when the Panel was going to provide its decision in this matter, it emerged that the registration of Dr Stephanopoulos had lapsed

during his period of suspension. Rather than impose its determinations in the artificial scenario of Dr Stephanopoulos being technically unregistered, which would have precluded the Panel from imposing any determination that impacted upon the registration of Dr Stephanopoulos, the Panel adjourned the matter for Dr Stephanopoulos to take steps to endeavour to secure registration. Dr Stephanopoulos duly applied for restoration of his name to the Register of Medical Practitioners and at a meeting of the Medical Practitioners Board on 20 July 2006 the Board determined to restore his name to the Register.

## **The Images**

**[14]** The Panel inspected the seized images, namely those that were regarded by police as constituting child pornography<sup>1</sup>. They consisted of free downloads from the Internet from a small number of sites. The ages of the children varied. Most were of adolescent and pre-adolescent girls. A few of the children were very young, apparently being aged between four and seven years of age. These were particularly abhorrent. Most images were graphic in that they displayed the genitals of the children in full view. It was apparent that almost all images had been carefully staged by the pornographers.

**[15]** A small number of the images, including one of the video clips, displayed children apparently involved in sexual activity with another minor. Two of the JPEGs displayed young boys. None of the images showed the girls being penetrated. One of the video clips showed images of a young female with constrictions on her wrists suggestive of dominance and bondage activities. All images were unequivocally sexualised and involved children disporting themselves in a manner which attempted to be erotic. There were sequences involving the same child but overall hundreds of minors were depicted in the pictures. It was not readily possible to discern the geographical provenance of the images.

## **Evidence about the Images**

**[16]** The Panel requested Counsel Assisting the Panel to secure the attendance of Detective Senior Constable Lowe of the Computer Crime Squad of the Victoria Police to explain the inferences that could be drawn from the downloading of the images. He was involved in the investigation of the charges which were preferred against Dr Stephanopoulos.

**[17]** Detective Lowe confirmed the presence of some 27,000 pornographic images on the two computers of Dr Stephanopoulos and associated discs. He stated that there was an amount of replication between the pictures on the two computers. He was unable to identify with any accuracy how often Dr Stephanopoulos had visited the images he had downloaded and placed onto the hard disc of his computer. It appeared that the filing system used was primitive and not indicative of any sophisticated classification system employed by Dr Stephanopoulos.

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<sup>1</sup> No evidence from a paediatric endocrinologist, as in *R v Wicks* [2005] NSWCCA 405, was available, nor was it necessary although some females depicted were of an age that rendered the unlawfulness of the images equivocal.

- [18] No evidence was placed before the Panel that Dr Stephanopoulos had himself generated any of the pornographic images. Thus, the Panel's decision is based upon the proposition that he procured the images solely from free sites available on the Internet.

### **The Evidence of the Medical Practitioner**

- [19] Dr Stephanopoulos gave sworn evidence. He said that he had not accessed any form of pornography since 2003. He was insistent that he would not engage in such activity again, describing his activity as "despicable"<sup>2</sup> and "sickening"<sup>3</sup>. He told the Panel that the time subsequent to his being caught had been a horrible period for him but that in retrospect it had been "one of the best things that's happened to me in terms of my – as a person and hopefully in terms of my long-term future."<sup>4</sup> He described the changes that he had made to himself at an emotional and a cognitive level through the insights he had acquired and with the help of professionals. He said that the experience of being caught had functioned as a strong disincentive that overwhelmed the modest stress relief that he had obtained from his behaviour.

- [20] Dr Stephanopoulos told the Panel that he believed he had rationalised his conduct and fooled himself at the time of his offending in a number of ways. He explained what he meant – during the period of his criminal conduct he had been shouldering considerable amounts of responsibility in the workplace. In his mind at the time this had meant that if viewing pornography was the way he could cope with his work, it was justified. He now regarded such thought processes as "ridiculous" and "malformed". He told the Panel that he did not see a significant distinction between those who pay for pornography and those who view it without paying for it – "just because you're not paying for it, it doesn't mean you're not perpetuating it, and ... certainly at a minimum implicitly accepting of it as an acceptable thing."<sup>5</sup> He stated that from his current perspective the websites that he had accessed are set up to promote people accessing them and progressing further. When asked about the damage that he identified being done by the kind of conduct in which he had engaged, he specifically referred to the child victims. He pointed out that whether the person who had taken the photographs of the children had received money from him or not did not matter. From a moral point of view he had made himself part of the audience – "as a person I'm equally ashamed regardless and I find it equally abhorrent regardless."<sup>6</sup> He identified that children cannot consent to sexual activity and that the images which he had been viewing had been made by persons who had been exploiting the child subjects – "I can't begin to imagine the emotional and psychological damage that it would do to children to appear in them."<sup>7</sup>

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<sup>2</sup> Transcript, at p105.

<sup>3</sup> Transcript, at p107.

<sup>4</sup> Transcript, at p105.

<sup>5</sup> Transcript, at p106-107.

<sup>6</sup> Transcript, at p108.

<sup>7</sup> Transcript, at p127.

- [21] In retrospect, Dr Stephanopoulos felt that he had been trying to be too good a doctor. He said that the neurosurgical operative workload he had carried had been “ridiculous”. He said he now saw his behaviour in a different perspective – “I don’t have to do that to be a good doctor and to be a good person.”<sup>8</sup> He said that he accepted as of the date of giving evidence that it had always been his responsibility to turn off the computer. This meant that it was also his responsibility to ensure that it never happened again. He told the Panel that he was as confident that he would not indulge in the same criminal behaviour again as “confident of anything I’ve been in my life.”<sup>9</sup>
- [22] Dr Stephanopoulos said that he was prepared to continue to see Dr Glaser, his treating psychiatrist, or a colleague whom Dr Glaser nominates. He said that he planned to use computers only when he actually needed to do so. This meant that they would not constitute a source of recreation for him. He proposed to continue not to have his home computer connected to the Internet. He was happy for his access to a work computer to be password monitored so that people could identify the sites he had visited. When he is tired, he will not sit in the office and use the computer. He will adopt alternative strategies such as to go and rest or talk to colleagues. He will make sure he has books and music available.
- [23] Dr Stephanopoulos was asked about his access to child pornography during his period of offending. He described being barraged by unsolicited waves of material, some of which was child pornography. He maintained that he did not actively seek out child pornography sites (as against other pornographic sites) but found a sense of escapism and excitement from the unpredictability of what was being offered to him. In response to a question about his reasons for saving the material, he emphasised that it was exceptionally easy – just one mouse click – but also identified a predilection on his part to hoard things. He gave a number of examples of such behaviour which were benign. He maintained that he “almost never”<sup>10</sup> returned to the images that he had saved. He emphatically denied that he had an attraction to children. He noted that he had also saved images of adult males and made the point that he also had no attraction to them. He emphatically denied receiving any sexual gratification from the illegal images which he viewed and downloaded onto the hard disc of the work computer.
- [24] However, Dr Stephanopoulos conceded that his resort to pornography initially was for sexual gratification. He maintained that this “reward” no longer existed by the time that he entered the phase of accessing child pornography. He denied telling Dr Glaser that he typed in the names of sites that he specifically knew contained child pornography
- [25] Dr Stephanopoulos described undertaking a Masters degree in Bioethics within an 18 month timeframe – subsequent to being apprehended on the criminal charges that took him to the Dandenong Magistrates’ Court. He said he did the study for both personal and professional reasons.

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<sup>8</sup> Transcript, at p108.

<sup>9</sup> Transcript, at p137.

<sup>10</sup> Transcript, at p120.

[26] Dr Stephanopoulos acknowledged “without reservation” that he had brought discredit upon his profession by his behaviour. He said that what he hoped for was an opportunity to redeem himself – to be able to work again and to be able to bring credit upon his profession.

### **The Perspective of the Treating Psychologist**

[27] The Panel received a report dated 29 November 2005 from Bob Ridley, counselling psychologist. It also heard oral evidence from him. Mr Ridley stated that Dr Stephanopoulos consulted him first in August 2003 and had attended regularly since then. Mr Ridley asked his client to complete the Impact of Events Scale. This showed an extremely severe reaction. The answers of Dr Stephanopoulos to testing provided evidence of “an extremely severe depression which continued through to the beginning of January in 2004. It reduced to moderate levels by October 2004.”<sup>11</sup> Mr Ridley stated that his major role had been to monitor his client’s emotional progress and to provide him with professional support. He reported that Dr Stephanopoulos did not consider that addiction was a major difficulty for him but rather that his use of pornography had been related to the immediate and long-term stressors which he had faced. He indicated that the investigation and hearing process had proved extremely distressing for Dr Stephanopoulos.

[28] Mr Ridley expressed the view that prior to the police intervention Dr Stephanopoulos had lived a driven life, accepting an excessive workload, being constantly on call, giving up sport and much of his social life, neglecting his personal relationships and concentrating solely on his professional pursuits. He stated that Dr Stephanopoulos had told him that he was introduced to Internet pornography by a friend and found this stimulating and a diversion from work. He became addicted to it but at the time viewed it as a harmless diversion.

[29] Mr Ridley concluded that “the trauma of the last two years would make it unlikely that he would return to pornography as a habit”. However, he stressed that he had not treated Dr Stephanopoulos specifically in relation to matters related to his addiction to pornography. He expressed the view that Dr Stephanopoulos does not constitute an ongoing risk to the community and particularly identified as reasons for the practitioner’s changed behaviour that he had faced up to what had previously given rise to his driven behaviour; that he had experienced considerable trauma as a result of his conduct; that he had suffered considerable personal humiliation, loss of income and additional expense, professional limitation and the loss of a close personal relationship; that he would remain on the Sex Offenders Register for a number of years; and that, to his knowledge, there had been no suggestion of inappropriate contact by Dr Stephanopoulos with actual patients. Further, the emergence of understanding within the medical community of the consequences of unreasonable work environments would reduce the likelihood of Dr Stephanopoulos being exposed to the excessive workload that may have led him to resort to internet pornography as a diversion.

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<sup>11</sup> Transcript, at p66.

[30] Mr Ridley told the Panel that he had not seen any sign that Dr Stephanopoulos suffers from an underlying sexual deviation<sup>12</sup>. He contended that:

“It would seem appropriate to retain the skill and dedication of this young man within his chosen profession and given that he will remain under training for some time it should be possible to review his progress and to place him carefully with an experienced practitioner with an understanding of necessary limits and the ability to mentor Abraham in the development of sensible work habits. It may also be useful, as part of an agreement related to his registration and reinstatement in the training program, to have an independent mentor, not directly responsible for his work but cognizant of it, to speak with him in confidence on a regular basis.”

[31] Mr Ridley recommended that Dr Stephanopoulos have available to him a person not responsible for his work whom he could consult from time to time on a confidential basis. He did not regard Dr Stephanopoulos as requiring a psychotherapist but thought that he could benefit from ongoing mentoring.

### **The Perspective of an Assessing Forensic Psychologist**

[32] The Panel was provided with two reports from Professor James Ogloff, dated 19 January 2005 and 15 December 2005. Professor Ogloff is the Director of Psychological Services at the Victorian Institute of Forensic Mental Health and the Foundation Professor of Clinical Forensic Psychology at Monash University. He is internationally experienced in assessment of deviant expressions of sexuality.

[33] Professor Ogloff noted that Dr Stephanopoulos' family had emigrated to Australia as refugees after Turkey's invasion of Cyprus in 1976. He reviewed the history of Dr Stephanopoulos and described his interest in sexual activity and the frequency of his sexual behaviour as falling within normal limits. He noted that Dr Stephanopoulos described himself as exclusively heterosexual and denied any sexual interest in children. He administered the Paulhus Deception Scales and the Personality Assessment Inventory. These yielded the suggestion that Dr Stephanopoulos was not purposefully managing impressions about himself nor engaging in significant levels of self-deception.

[34] Professor Ogloff expressed the view that as of January 2005 Dr Stephanopoulos was experiencing a depressive experience although this fell short of clinical depression. He commented that Dr Stephanopoulos' responses suggested that he occasionally experiences maladaptive behaviour patterns aimed at controlling anxiety. Professor Ogloff stated that in his opinion Dr Stephanopoulos “appears to pose a low level of risk for engaging in physical contact with children. ... he does not appear to be a paedophile.”

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<sup>12</sup> Transcript, at p69.

- [35] Professor Ogloff described Dr Stephanopoulos' resort to child pornography as having followed a common pattern. His interest in pornography generally was based upon curiosity about sex at a time when he was particularly busy and stressed. He had essentially no functional mode of coping with his work circumstances. He accessed and downloaded the images at work and took to collecting more and more images. His obsessive thoughts about pornography occurred when he was on his own at the hospital at stressful times. This enabled a level of escape from the matters that were concerning him.
- [36] Professor Ogloff commented that Dr Stephanopoulos accessed more images than anyone could reasonably access for a sexual purpose – “This behaviour was driven by his generally obsessive nature, and because of the excitement it served in his life.” He described Dr Stephanopoulos' behaviour as playing for him the same role as gambling and substance abuse for others who are highly stressed.
- [37] Professor Ogloff described Dr Stephanopoulos as possessing many protective factors that ameliorate any level of risk that he poses – both for sexually assaulting children and for accessing child pornography in the future. In this regard, he emphasised how high the stakes have been for Dr Stephanopoulos in terms of his having jeopardised his profession, reputation and his relationship with his partner. Secondly, Dr Stephanopoulos was described by Professor Ogloff as “an insightful, sincere and honest man. These characteristics would bode well for his ability to understand his behaviour and to control it.”
- [38] Professor Ogloff recommended that Dr Stephanopoulos obtain treatment specifically aimed at understanding and ensuring further control of his behaviour. By the time that Professor Ogloff wrote his second report, Dr Stephanopoulos had consulted Dr Glaser (see below).
- [39] Professor Ogloff administered to Dr Stephanopoulos a further psychometric test – the Multiphasic Sex Inventory II, a standardised instrument designed to assess the psychosexual characteristics of sexual offenders with regard to sexual history and knowledge, sexually deviant acts, behavioural aspects of offences, cognitive processes, deceptive styles and motivation to participate in treatment. Dr Stephanopoulos did not give answers which led Professor Ogloff to harbour any concerns about his sexual interest in children. Professor Ogloff described Dr Stephanopoulos as demonstrating a “very high degree of insight into his offending behaviour.” He showed no signs of mental illness or personality disorder.
- [40] Professor Ogloff also found that Dr Stephanopoulos demonstrated high levels of self-control. He commented that Dr Stephanopoulos “appears to have engaged in the possession of Internet pornography partly as a release from his then stressful and anxious life as a busy neurosurgery registrar.” He emphasised that he had been made privy to no evidence that suggested Dr Stephanopoulos was a paedophile. In fact, the results from the administration of the Multiphasic Sex Inventory suggested to the contrary. Professor Ogloff expressed the view that he, along with other clinicians, held the view that a series of factors made it “very unlikely” that Dr Stephanopoulos would repeat his criminal conduct:

“[he] has impressed me as a man who has taken responsibility for his behaviour, has now sought better balance in his life, has gained insight into harmful behaviours in which he was engaging, and is prepared to begin a re-engagement with his profession. Dr Stephanopoulos is a very humane and decent man who I believe can, over time, regain the confidence of those in his profession.”

### **The Perspective of the Treating Psychiatrist**

- [41] The Panel received reports from Dr William Glaser, psychiatrist, dated 6 December 2005 and 18 April 2006. It also heard extensive oral evidence from him on two separate occasions. Dr Glaser was questioned at length by the Panel. Dr Glaser is a psychiatrist with particular expertise in sex offending and in diagnosing and treating sexual disorders.
- [42] All told, Dr Glaser had seen Dr Stephanopoulos on thirteen occasions by the time of the May hearing of the Panel. He provided to the Panel an extensive account by Dr Stephanopoulos of his offending behaviour, along with his own analyses of relevant factors in respect of the potential for recidivism on the part of the practitioner.
- [43] Dr Glaser observed that he understood that when Dr Stephanopoulos engaged in his criminal conduct he was working between 180 and 200 hours per fortnight. During a period of 18 months he had performed in the order of 950 neurosurgical procedures, some 750 of which he carried out on his own. Dr Stephanopoulos’ perspective was that this was twice the total number of operations performed by the four consultants on the unit. He had felt unsupported and exploited by his workload and had explored other options in relation to completing his training. He had been blamed for various matters where results had been suboptimal. In 2003 Dr Stephanopoulos had been feeling “really helpless” and just holding on, maintaining a façade.
- [44] Dr Glaser reported to the Panel that Dr Stephanopoulos had told him that he remained puzzled about why he had accessed child pornography. He told Dr Glaser that “it was something that I could do if I had ten minutes (to myself, at work) ... it was mindless ... no emotional input ... I couldn’t go home and play sport, read a book ... it seemed the least damaging release ... allowed me to treat patients without compromising them.” He had lost the capacity to manage stress in more conventional and socially acceptable ways.
- [45] Dr Glaser reported that Dr Stephanopoulos maintained to him that he had never searched in a directed way for child pornography. He had not paid for it and had not sought out chat room sites. He maintained that he had accessed child pornography on some 10 to 20 occasions. He denied having favourite images to which he returned. He admitted that he took images home but said that this was because he did not have access to the Internet at home. He told Dr Glaser that he only accessed the images on one or two occasions at his domestic residence, telling him that “the draw wasn’t there at home.”

- [46] Dr Stephanopoulos told Dr Glaser that by mid-2003 he had stopped accessing pornographic images. He had made alternative arrangements for 2004 and had started to plan his engagement to his partner. This subsequently did not proceed after she terminated the relationship in the wake of adverse publicity attendant upon the charges preferred against Dr Stephanopoulos.
- [47] Dr Glaser observed that the effect on Dr Stephanopoulos of the discovery of his offending behaviour had been devastating. His relationship with his girlfriend had concluded, he had had to move back to his parents' house and he had been driven to earn an income by working in a plant nursery.
- [48] Dr Glaser informed the Panel that Dr Stephanopoulos was 33 years of age. He had been born in the Greek part of Cyprus and migrated to Australia when he was a young child. He suffered quite a deal of bullying at school but otherwise performed well academically. He graduated third in his medical class with honours and undertook a variety of extracurricular activities, including voluntary work and dissections in the anatomy museum. Dr Glaser described a series of age appropriate heterosexual relationship in which Dr Stephanopoulos had engaged. He had been living with his most recent partner when he committed his criminal offences but at the time they were seeing little of each other because of his work patterns. Subsequent to her terminating the relationship with Dr Stephanopoulos, he and she have had no further contact and he has not been involved in any other romantic relationships. He told Dr Glaser that his sexual relationships with all partners had been satisfactory and conventional.
- [49] Dr Stephanopoulos told Dr Glaser that he had not exhibited any particular interest in pornography until four years previously when he stumbled across a pornographic site when surfing the Internet for information about a new car. The Panel observed that this was not wholly consistent with what he had told Mr Ridley (in terms of having been introduced to it by a friend) but Dr Glaser said that he did not attach particular significance to this anomaly. At that stage he "did not take it much further".
- [50] Dr Glaser reported that Dr Stephanopoulos had received a level of support from family members and latterly had organised himself to be involved in activities such as learning the guitar, going for bicycle rides and undertaking weekly gym sessions. He has completed a Master's degree in Bioethics and used the concepts he learned in that context to guide his thinking about practical ways of avoiding possible relapse of his criminal conduct.
- [51] Dr Glaser stated that when he first saw Dr Stephanopoulos it was evident that the practitioner had already gained "a great deal of insight" into the circumstances which had preceded his offending activities. Since, he has made concerted efforts to develop suitable ways of dealing with stress. During the sessions with Dr Glaser, he worked on this base to formulate specific and concrete methods of relapse prevention. These included recognising the emotions which represent high risk situations for himself, avoiding such high-risk situations, and formulating strategies for dealing with such situations should they occur.

- [52] Dr Glaser also expressed the opinion that Dr Stephanopoulos had acquired the capacity to recognise many of the cognitive distortions which he had used to justify continuing to access pornography over a period of months. He felt that no such distortions remained<sup>13</sup>, although he conceded that Dr Stephanopoulos' denial of ever having been attracted to children may constitute such a distortion. In particular, Dr Stephanopoulos had accepted that his activities had been based on a flawed consequentialist justification that viewing child pornography was allowing him to "do good" in terms of his surgical work. Dr Glaser expressed the view that Dr Stephanopoulos now understood that the harm caused (at the least) by his encouragement of the exploitation of those victimised by the pornography industry was far greater than he had initially assumed: "Furthermore, he now understand that other ethical systems ... offer a far more sensible, compassionate and practical way of dealing with the world; in particular, rather than resorting to the dubious comforts of pornography, he needs to revise his impossible expectations of himself as a committed and compassionate medical practitioner." Dr Glaser commented that in ways such as these Dr Stephanopoulos has managed to use his own personal frame of reference as a way of absorbing many of the principles of cognitive-behaviour therapy "which have been found to be effective in the treatment of people displaying inappropriate sexual behaviours."
- [53] Dr Glaser stated that he had identified no evidence that Dr Stephanopoulos has a personality disorder. However, he is a perfectionistic and achievement-oriented young man. He turned to pornography at the beginning of 2003 "as a way of relieving his feelings of intense anger, frustration and exhaustion." He noted that there is no evidence that Dr Stephanopoulos has ever engaged in any form of deviant or inappropriate sexual behaviour of any other kind. He has not exhibited any other psychiatric disturbance, substance abuse, personality difficulties, forensic history or other factor which might increase his risk of recidivism. In treatment he has gained substantial insights into the circumstances which precipitated his offending behaviours, the cognitive distortions which perpetuated them and the strategies which he must now use for dealing with situations where he might be at risk of relapsing into those behaviours. Thus, he concluded that the risk of Dr Stephanopoulos relapsing is "extremely low", provided he remains in receipt of long-term therapy<sup>14</sup>.
- [54] Dr Glaser drew to the Panel's attention that Dr Stephanopoulos had expressed a willingness to continue treatment with him or another appropriate practitioner, aimed at further consolidating his insights into his activities and relapse prevention strategies. He stated that the need for long term supervision arises in terms of any chronic medical condition and he felt that the same need arose in respect of Dr Stephanopoulos.<sup>15</sup>
- [55] In an updated report four and a half months later Dr Glaser informed the Panel that around the time of his criminal offending Dr Stephanopoulos reported that he had started to encounter "pop-ups" referring to child pornography as a result of his initial usage of pornography websites. As he

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<sup>13</sup> Transcript, at p210

<sup>14</sup> Transcript, at p227

<sup>15</sup> Transcript, at p220.

started to access this material, it started to “pop up” automatically. It was these “pop-ups” that were observed by a fellow worker.

- [56] Dr Glaser informed the Panel that the position of Dr Stephanopoulos was that he started saving images indiscriminately, whether or not they involved children. Dr Stephanopoulos found that the sexual interest element diminished quickly for him and the comforts he derived from the material centred around its escapist character.
- [57] Dr Glaser reiterated his previously expressed view that Dr Stephanopoulos had worked effectively on relapse prevention strategies. He had told Dr Glaser that he experienced “an element of relief” when he was discovered.
- [58] Dr Glaser recited a series of personal difficulties, including the death of a close relative, which have latterly afflicted Dr Stephanopoulos. Nonetheless he has maintained his insight, further developed his relapse prevention and stress management strategies and managed “to cope very well with a number of distressing circumstances in his life”. Dr Glaser repeated his opinion that the risk of Dr Stephanopoulos relapsing is “very low”.
- [59] Dr Glaser expressed the view that Dr Stephanopoulos is not experiencing any significant level of cognitive distortion with respect to his offending activities. He accepts that child pornography is harmful and does not seek to “sugar-coat” it in any way.
- [60] Dr Glaser expressed the view that when Dr Stephanopoulos committed his criminal acts he would have been aware that what he was doing was illegal and criminal but commented that “The problem with these sorts of addictive behaviours is that, as we see with other forms of addictive behaviour, awareness doesn’t necessarily guarantee that people will avoid engaging in those sorts of behaviours.”<sup>16</sup> He thought that Dr Stephanopoulos at the time had not given consideration to the effect of the pornography upon its child subjects. However, Dr Stephanopoulos has since reflected upon this fact and accepts without equivocation both that children are seriously harmed by being made the subject of pornography and that all consumers of such pornography share in the responsibility for its adverse effects..
- [61] Dr Glaser was recalled in order to address certain matters that troubled the Panel, including the inferences that it should draw from the protestations of Dr Stephanopoulos that he was never sexually attracted to children. Dr Glaser stated that Dr Stephanopoulos’ attraction in 2003 to children was “a strong possibility”<sup>17</sup>. He told the Panel, though, that Dr Stephanopoulos had agreed during therapy, albeit reluctantly, that there is a risk of his attraction to children recurring.
- [62] However, Dr Glaser expressed the view that Dr Stephanopoulos’ denials in this regard are not an important predictive factor in terms of his potential to reoffend. He identified “good psychological reasons” why Dr Stephanopoulos

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<sup>16</sup> Transcript, at p99.

<sup>17</sup> Transcript, at p202.

may maintain the stance that he has never been sexually attracted to children in spite of evidence to the contrary. Drawing upon the professional literature, Dr Glaser identified that an important issue in terms of sex offender treatment is the offender's self-esteem and their feelings of self-efficacy. If the offender feels worthless and really bad about himself (or herself), there is a risk that they will feel disinclined or unable to control their impulses: "For some offenders the thought that they have engaged in this absolutely vile, disgusting, perverse activity of sexual arousal towards children is enormously damaging."<sup>18</sup> He instanced rates of offender suicide.

**[63]** Dr Glaser classified such despair as counter-therapeutic from a range of perspectives, including the potential for offenders such as Dr Stephanopoulos to abandon efforts to change. This led Dr Glaser to express the view that whether Dr Stephanopoulos some three years ago was passingly sexually attracted toward children is "fairly limited" in importance – "The important things that he's done are literally to pay attention to the risk factors that we know are significant in influencing the future course of events."<sup>19</sup> He emphasised the fact that Dr Stephanopoulos has acquired a high level of relevant insights "which is very rare – very rare in people in this sort of situation."<sup>20</sup>

**[64]** Dr Glaser placed great significance on the implementation by Dr Stephanopoulos of cognitive behavioural techniques to avoid further deviant sexual behaviours. He argued that "an understanding of the origins and the meaning of behaviours is not necessary to eliminate them."<sup>21</sup> The important thing for Dr Stephanopoulos is his preparedness to adopt management and coping strategies to deal with factors that might trigger a relapse into unacceptable behaviours, as distinct from his having a deep-seated and acknowledged understanding of his attractions and behaviour in the first half of 2003.

### **The Perspective of Professional Colleagues**

**[65]** The Panel received letters and heard evidence from a series of professional colleagues of Dr Stephanopoulos.

**[66]** Mr Michael Pullar, neurosurgeon, in a letter of 12 December 2005 stated that he had been impressed by the diligence of Dr Stephanopoulos, maintaining that he had shown himself to be a skilled clinician with excellent judgment. In the operating theatre he had confidence, impressive technical ability and appropriate self-discipline. Mr Pullar found him to be polite, engaging and receptive. Peers and staff reported him as hard working, a good communicator and well liked, demonstrating good rapport with patients and their families. He speculated that Dr Stephanopoulos' behaviour had arisen from stress. He reported that Dr Stephanopoulos had undertaken psychological counselling and vocational advice from the Royal Australasian College of Surgeons. He continued to assist Mr Pullar in regular private

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<sup>18</sup> Transcript, at p198.

<sup>19</sup> Transcript, at p200.

<sup>20</sup> Transcript, at p201.

<sup>21</sup> Transcript, at p205.

operating sessions during 2004 until it became evident that he would be charged. At that stage he offered to discontinue the arrangement.

**[67]** Mr Pullar predicted that Dr Stephanopoulos would make an “excellent neurosurgeon” if permitted to be registered and to return to his training programme:

“He has undoubted potential to provide high quality neurosurgical health care to the Victorian community. ... In my opinion he is a safe and competent doctor. ... While, in the short term, he has brought disrepute to the medical profession I believe he had a significant capacity to enrich the medical profession by his established skills as a doctor and his undoubted potential as a neurosurgeon.”

**[68]** Dr Bernard Yam, consultant neurologist, in a letter dated 6 December 2005, stated that in his experience Dr Stephanopoulos had demonstrated strong interpersonal skills, communicating warmly and personably with colleagues. He showed a proactive approach to learning and progression in knowledge, as well as an innate analytical and problem-solving approach to medical issues. He was dedicated as an advocate for patients and tireless in arranging and instigating urgent treatment for his patients, always acting in their best interests.

**[69]** Dr Mohammad Keikha, an accredited trainee registrar in general surgery, in a letter dated 2 December 2005, stated that he had known Dr Stephanopoulos as a co-student, friend and colleague for over 16 years. He knew him as a genuine, reliable, considerate and giving person. He described the range of skills possessed by Dr Stephanopoulos as “indeed rare”. Dr Keikha described Dr Stephanopoulos as particularly exhibiting compassion and empathy, as well as being “an outstanding clinician, brilliant technical operator, while remaining very human, humble and compassionate in his interaction with patients and colleagues.” He described Dr Stephanopoulos as remembered at Monash Medical Centre “with respect and admiration and no-one had expressed anything but a hope that he will again be afforded the opportunity to return to his work and be all that we know he can. ... the personal qualities and depth of skills that he brings to his work are rare if not unique and his absence from clinical practice would be a tragic waste for all concerned.”

**[70]** Paul Horvath, a consultant in a multinational software company, in a letter dated 5 December 2005, described Dr Stephanopoulos as a man “of unquestionable personal integrity”, warm, unassuming, thoughtful and generous. He described the toll that “the matter” has taken on Dr Stephanopoulos at a personal and financial level. He commented that he had never met anyone so dedicated and passionate about their work.

**[71]** The Reverend Father Efstathios Ladas of the Greek Orthodox Parish of St Athanasios, in an undated letter, attested to Dr Stephanopoulos as a well-behaved, trustworthy, reliable man, known to be concerned to help others.

**[72]** Mr Armin Drada, consultant neurosurgeon, in a letter dated 12 December 2005, stated that over a period of 18 months working with Dr

Stephanopoulos, he had found the practitioner to be extremely capable and hard-working. He had appeared to cope well with significant stress. He acknowledged that Dr Stephanopoulos had brought discredit upon his profession but expressed the view that, given the opportunity, he would redress this in due course.

- [73] The Panel also heard evidence from Ms Elizabeth Lewis, a neurosurgeon who has practised since 1975 and who supervised Dr Stephanopoulos for a time. She confirmed that the workload that he carried was very heavy – around 190 to 200 hours per fortnight. She said that in her experience Dr Stephanopoulos always performed to the best of his abilities and that his best was “excellent”. She said that from her perspective he rated amongst the best neurosurgery registrars she had ever encountered. She commented: “I think he’s got a lot to offer, this has been a bit of a wake up call I suspect, that he will realize that it’s very important the way you behave and what you do and I think he could be a very good neurosurgeon”<sup>22</sup> Ms Lewis described Dr Stephanopoulos winning the Professor Vernon Marshall prize for research.
- [74] Ms Lewis reminded the Panel that she had very strong views about child sexual abuse, having been the Chair of the Child Maltreatment Committee. She was confident that she would have been informed had Dr Stephanopoulos done anything at the Hospital to suggest that he had paedophilic tendencies.
- [75] Ms Lynette Wallace, nurse unit manager, in a letter dated 1 December 2005, described the conditions in which Dr Stephanopoulos worked during the relevant period. She emphasised the pressures that they placed upon the registrars. She stated that she found him to be an excellent clinician, decision-maker and communicator. From the perspective of her 30 years on neurosurgery wards she considered Dr Stephanopoulos as “one of the most gifted of registrars”.
- [76] Ms Wallace stated that she never saw Dr Stephanopoulos behave inappropriately with patients, families or staff. She is confident that he will not repeat his errors. She expressed the view that the long hours of work and an often-solitary world that he inhabited had made Dr Stephanopoulos vulnerable to “external distractions. I believe that, if permitted to continue in his medical practice he would undertake his duties cautiously and diligently. I believe that Abraham deserves the opportunity to redeem himself and use his extraordinary gift once again to benefit patients.”
- [77] Dr Andrei Corniou, in a letter dated 8 December 2005, described Dr Stephanopoulos as “highly competent, dependable, hard-working, conscientious and courteous.” He stated that he still regarded him as a person of great integrity and to have grown significantly during the ordeals of the previous two and half years: “Professionally he undoubtedly remains an exceptionally talented doctor who has a lot to offer the community in his chosen specialty of neurosurgery through his natural abilities and improved perspective and strength.”

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<sup>22</sup> Transcript, at p60.

- [78] Bruce Dearness, the Support Staff Supervisor at Monash Medical Centre, in a fax of 14 December 2005, described Dr Stephanopoulos as tolerant, courteous, patient and possessed of good communication skills. He gave evidence to the Panel. He recalled Dr Stephanopoulos as on occasions appearing exhausted.
- [79] Ms Tanya Jhoomun, registered nurse at Monash Medical Centre, who worked with Dr Stephanopoulos for approximately three and a half years, in a letter dated 14 December 2005, described him as extremely hard-working, capable and with the potential to be an exceptional neurosurgeon.
- [80] Bill Garezos, Chief Executive Officer of the Kingston City Soccer Club, in a letter dated 5 December 2005, stated that he had known Dr Stephanopoulos for over 20 years. He expressed the view that Dr Stephanopoulos was of excellent character. He had been willing to assist the club both medically and socially. He commented that Dr Stephanopoulos had shown great remorse since his offending – “this reflects on his actions towards our community at large. In his interaction with families and children his behaviour has always been impeccable.”
- [81] S Younes, Club Secretary of the Clayton Fishing Club, in a letter dated 13 December 2005, stated that he has known Dr Stephanopoulos for over ten years. He affirmed confidence in him as a professional who is respected, trusted and valued. He also reported on the great remorse exhibited by Dr Stephanopoulos and expressed the view that the community would be the major loser were Dr Stephanopoulos not allowed to rejoin the medical community.
- [82] Mr George Vlamakis, who described himself as a longstanding friend of Dr Stephanopoulos, in a letter dated 13 December 2005, stated that the most marked characteristic that he had observed in his friend was “his single visioned focus on his medical studies and care of patients.” He corroborated the claim that Dr Stephanopoulos had been the victim of considerable bullying in earlier times.
- [83] Mr Vlamakis stated that since Dr Stephanopoulos had been charged he had seen him reach the depths of despair, shame, isolation and guilt. He regarded Dr Stephanopoulos as having faced up to the consequences of his conviction with dignity and reflectiveness – “he is reading more widely and grappling more thoughtfully about what it means to live a worthwhile and healthy life.” He stated that he had spoken with Dr Stephanopoulos about his pornography problem – “I feel he fully understands why his offences are abhorrent and criminal. He feels remorse and shame at supporting a criminal activity that is abhorrently exploitative and damaging to children.”
- [84] Ms Anthy Lakkotripis, a longtime friend of Dr Stephanopoulos, in a letter dated 14 December 2005, expressed her confidence in his integrity and that he will not repeat his errors.

## The Law as to Professional Misconduct

- [85] Priestley JA in *Qidwai v Brown*<sup>23</sup> held that the test for whether a practitioner has committed “misconduct in a professional respect”<sup>24</sup> was whether “the practitioner was in such breach of the written or unwritten rules of the profession as would reasonably incur the strong reprobation of professional brethren of good repute and competence”. He observed that the “whole tenor” of Sugarman J’s judgment in *Ex parte Meehan* was to read “infamous conduct in a professional respect” in a sense corresponding to “misconduct in a professional respect”.
- [86] In England, Viscount Maugham in *Myers v Elman*<sup>25</sup> affirmed that a solicitor could be struck off the rolls or suspended on the ground of “professional misconduct”, words which he found “have been properly defined as conduct which would reasonably be regarded as disgraceful or dishonourable by solicitors of good repute and competency”<sup>26</sup>. The Judicial Committee of the Privy Council in *Felix v General Dental Council*<sup>27</sup> held that it is necessary in financial matters that the conduct of the professional be attended by moral turpitude or fraud or dishonesty for it to be appropriate for the practitioner to be found guilty of infamous or disgraceful conduct in a professional respect.
- [87] Applying the authorities, Dean J held in the Victorian Supreme Court decision of *Re a Solicitor*<sup>28</sup> that “misconduct” “in a professional capacity” under s15 of the *Legal Profession Practice Act 1958* (Vic) bore the same meaning as described by the House of Lords in *Myers v Elman* in respect of “professional misconduct”. To a similar effect, Gillard J in *Mullany v Psychologists Registration Board*<sup>29</sup> held that while “professional misconduct” is not defined in the *Psychologists Registration Act 1987* (Vic) it “has a well established meaning in this State in respect of the activities of professional persons. The word ‘misconduct’ has been considered with reference to solicitors. Here we are concerned with ‘professional misconduct’. The definition of ‘misconduct’ which has been accepted in this State is that stated by Dean J in *Re a Solicitor*”.
- [88] On the same issue, Eames J has commented of judicial interpretation of the expression “professional misconduct” that the words “comprised conduct which was more than mere professional incompetence, or mere deficiencies in professional practice, but would encompass conduct which included ‘a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse of the privileges which accompany registration as a medical practitioner.’ per Kirby P in *Pillai v Messiter (no 2)* [1989] 16 NSWLR 197 at 200.”<sup>30</sup>

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<sup>23</sup>[1984] 1 NSWLR 100 at 105.

<sup>24</sup>Under s27(1)(c) of the *Medical Practitioners Act 1938* (NSW) which by that stage had omitted the pejorative adjective “infamous”.

<sup>25</sup>[1940] AC 282 at 288-289.

<sup>26</sup>Citing *Re a Solicitor; Ex parte Law Society* [1912] 1 KB 302.

<sup>27</sup>[1960] AC 704.

<sup>28</sup>[1960] VR 617 at 622.

<sup>29</sup>Unreported, Vic Supreme Court, 22 December 1997 at p9.

<sup>30</sup>*McGrath v Medical Practitioners Board*, unreported, Supreme Court of Victoria, 1 November 1996.

[89] A third version of the test was enunciated by Mandie J in *Campbell v The Dental Board of Victoria*<sup>31</sup> who followed the formulation of the Queensland Full Court in *Adamson v Queensland Law Society Inc*<sup>32</sup>:

“The test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.”

### Possession of Child Pornography

[90] Possession of child pornography contrary to s70 of the *Crimes Act 1958* (Vic) is a serious criminal offence. It is an indictable offence punishable by Level 6 imprisonment – up to five years imprisonment. A defence exists if the defendant proves that he or she believed on reasonable grounds that the minor depicted in the pornography was aged 18 years or older. “Child pornography” is defined under s67A of the *Crimes Act* to mean “a film, photograph, publication or computer game that describes or depicts a person who is, or appears to be, a minor engaging in sexual activity or depicted in an indecent sexual manner or context.”

[91] No defence to the charges of possession of child pornography was asserted by Dr Stephanopoulos.

[92] Vincent JA has observed as follows of the changes to s70:

“For a number of reasons it was decided to deter those who may be so inclined from collecting, retaining or disseminating such material by rendering its mere possession a criminal offence punishable by imprisonment. The increase in penalty and the categorisation of the offence as indictable were obviously intended to “send a clear message”, to use the expression employed by the Attorney-General in his Second Reading Speech introducing the amendment, of the serious view that was taken of the possession of child pornography by this community and to increase the deterrent effect of the law.”<sup>33</sup>

[93] The Panel is of the view that the conduct of Dr Stephanopoulos in this matter, when objectively viewed, is of a high level of immorality, outrageousness and disgracefulness. It is pertinent too that a large proportion of his offending occurred in a work context – in other words, he brought his sexually deviant absorptions to the place where he performed his functions as a neurosurgical registrar. Not only this but he made minimal efforts to keep his personal perversions private and away from his colleagues who used the work computer. This may or may not indicate a wish to be identified but is indicative of a disregard for the sensibilities of his workmates.

[94] Because Dr Stephanopoulos’ conduct involved criminal offending in respect of children, it is particularly serious<sup>34</sup>. The possession of child pornography involves facilitation and encouragement of the corruption and violation of

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<sup>31</sup>[1999] VSC 113 at [23]-[24].

<sup>32</sup>[1990] 1 Qd R 498 at 507.

<sup>33</sup>*R v Curtain* [2001] VSCA 156 at [25]; see also *R v Jongsmā* [2004] VSCA 218; *Dodge v The Queen* (2002) 134 A.Crim.R. 435; *G v The State of Western Australia* [2005] WASCA 150.

<sup>34</sup> See eg *R v Smart* [2005] VSCA 226.

children. The preparedness of persons such as Dr Stephanopoulos to be consumers of such material, by viewing, downloading and hoarding child pornography, provides a fillip to those who create it and encourages the further exploitation and abuse of children's innocence. The offence created by s70 of the *Crimes Act* is intended, among other things, to deter prospective collectors of child pornography in the hope that adverse economic consequences will ensue for those who produce it<sup>35</sup>. As the Ontario Court of Appeal put it in *Stroempl*:

"The possession of child pornography is a very important contributing element in the general problem of child pornography. In a very real sense, possessors ... instigate the production and distribution of child pornography – and the production of child pornography, in turn, frequently involves child abuse in one form or another. The trial judge was right in his observation that if the courts, through the imposition of appropriate sanctions, stifle the activities of the prospective purchasers and collectors of child pornography, this may go some distance to smother the market for child pornography altogether. In turn, this would substantially reduce the motivation to produce child pornography in the first place."<sup>36</sup>

Similarly, Evans LJ in *Fellows*<sup>37</sup> commented:

"There is enormous public disquiet at the potential which the internet offers for the international transmission of pornography, in particular for those whose perverted tastes include collecting and viewing indecent photographs of children. Add to this the public revulsion against paedophilia in all its forms and it becomes clear, in our judgment, that heavy deterrent sentences must be imposed when serious offences, which are not always easy to discover, come to light."<sup>17</sup>

[95] In Victoria the Court of Criminal Appeal in *R v Jongsma*<sup>38</sup> noted without disagreement the observations of the trial judge in that case:

"The argument that mere possession of such material of itself harmed nobody overlooked the method of its production, by which little children are made to behave in a manner that is utterly repugnant, degrading and at odds with what should be the innocence of childhood. That behaviour was provoked because there was a market for images of that sort. Anybody who entered that market as a customer perpetuated the wickedness that was its foundation and *raison d' être*.

[96] We are satisfied therefore that the offence of possession of child pornography is regarded very seriously and with great consternation within the general community and by the courts. Dr Stephanopoulos' possession of large amounts of degrading and illegal images in the workplace, in his car and at his home was disgraceful, dishonourable, worthy of strong reprobation and departed substantially from what is to be expected of a registered practitioner of medicine. It constitutes professional misconduct. Moreover it has resulted in his being convicted of indictable offences and by virtue of this fact also

<sup>35</sup> See *R v Coffey* [2003] VSCA 155 at [30] per Callaway JA. Compare *R v Liddington* (1997) 18 WAR 394 at 403.

<sup>36</sup> (1995) 105 CCC (3d) 187 at 191 per Mordern ACJO.

<sup>37</sup> [1997] 2 All ER 548.

<sup>38</sup> [2004] VSCA 218 at [14].

constitutes unprofessional conduct pursuant to s3(1)(h)(i) of the *Medical Practice Act 1994*. In both respects it constitutes unprofessional conduct of a serious nature.

### **Submissions as to Determination**

- [97] The principal task of the Panel in this matter has been to determine whether Dr Stephanopoulos should be permitted to practise as a medical practitioner and, if so, subject to what constraints. It heard submissions from two members of senior counsel on behalf of Dr Stephanopoulos in this regard and also from Ms Hinchey, counsel assisting the Board.
- [98] Mr Forrest QC for Dr Stephanopoulos accepted that the sanctions to be imposed on Dr Stephanopoulos are those which best protect the Victorian public and maintain professional standards in the eyes of the public.
- [99] He argued that the Panel should find, as a matter of fact, that the chances of Dr Stephanopoulos repeating his criminal conduct is low, sufficiently low, as he put it that “all other things being equal, ... the practitioner does not present with a significant risk of repetition.”<sup>39</sup> He submitted that any informed member of the community who heard the practitioner’s evidence of the process of detection; resignation; ostracisation by his peers; being dealt with criminally; wider ostracisation within the general community; and uncertainty about his future would recognise the enormity of the impact of these experiences upon Dr Stephanopoulos. Such a person would also conclude that the practitioner does not constitute an unacceptable ongoing risk. He particularly relied in this regard upon the evidence of Dr Glaser and of Professor Oglhoff.
- [100] Mr Forrest also drew to the Panel’s attention the extent and significance of Dr Stephanopoulos’ acquisition of insight. In effect, he urged the Panel to conclude that the practitioner has initiated substantial and effective self-treatment, which includes having undertaken and completed the Monash University Bioethics course. He also instanced the acceptance by Dr Stephanopoulos of the lack of distinction between those who pay and those do not pay for child pornography.
- [101] Mr Forrest accepted the propriety of the imposition of conditions that Dr Stephanopoulos not treat children and the he continue to consult Dr Glaser or his nominee.
- [102] Mr Forrest particularly considered issues of deterrence of other medical practitioners on the basis of this having been raised as an issue by the Panel. He argued that a significant measure of general deterrence had already been effected by the sentence of suspended imprisonment imposed upon Dr Stephanopoulos. He contended that it would be wrong for the Panel to impose sanctions on the practitioner directed toward achieving no more than an object already achieved by the criminal courts.

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<sup>39</sup> Transcript, at p145.

- [103] On the issue of the need to uphold confidence in the medical profession, Mr Forrest contended that Dr Stephanopoulos had already brought great credit on his profession at an early stage in his career. He particularly relied in this regard on the written attestations of character provided to the Panel and the oral evidence that had been adduced on behalf of his client.
- [104] He acknowledged that the jail sentence imposed on Dr Stephanopoulos had not expired at the time of his submissions. He agreed that there had been instances in which practitioners had not been permitted to practise until they had concluded serving their suspended jail sentences. He submitted that the fact that Dr Stephanopoulos had been placed on the Sex Offenders Register for eight years by reason of his conviction should do no more than provide the Panel with additional comfort that a relevant protective measure is already in force by operation of law. He urged the Panel not to view the presence of Dr Stephanopoulos on the Register as a punishment imposed by the Magistrates' Court; rather it should regard this as an administrative mechanism designed to provide additional protection to the community.
- [105] In later submissions, Mr Noonan SC for Dr Stepanopoulos emphasised the insight displayed by the practitioner and raised the issue of the detriment to the community were the practitioner to be refused the right of practice. He distinguished the circumstances of Dr Stephanopoulos from those of Mr Provan<sup>40</sup>, a psychologist who appeared before a panel of the Psychologists Registration Board in 2005 (see below).
- [106] He noted that substantial stressors had been suffered by Dr Stephanopoulos and yet he had held fast to his strategies for avoiding relapse. He argued that the pattern of Dr Stephanopoulos' behaviour was to save images indiscriminately. He conceded that Dr Glaser had accepted that Dr Stephanopoulos might have obtained some sexual gratification from viewing child pornography but stressed that the important issue was the likelihood of him repeating his conduct. He reminded the panel of Dr Glaser's strongly expressed and lucid views on this issue.
- [107] Mr Noonan reminded the Panel of the evidence of Ms Lewis in relation to the technical skills and the potential of Dr Stephanopoulos. He noted that this was consistent with the evidence of a number of other practitioners who put their views in writing or appeared before the Panel. He argued that the evidence of good character in support of Dr Stephanopoulos constitutes an important part of the balancing exercise to be undertaken by the Panel.
- [108] Mr Noonan drew to the Panel's attention that Dr Stephanopoulos by May 2006 had effectively been suspended for a lengthy period. He acknowledged a need for the imposition of conditions on the registration of Dr Stephanopoulos, including ongoing care by Dr Glaser and a preclusion upon treating children. He argued that the Panel should not impose a financial penalty upon Dr Stephanopoulos because of the practitioner's financial

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<sup>40</sup> [2005] PRBD (Vic) 3; [http://www.psychreg.vic.gov.au/pdf/decision\\_20051205.pdf](http://www.psychreg.vic.gov.au/pdf/decision_20051205.pdf)

circumstances but accepted that it was appropriate for a formal reprimand to be imposed.

**[109]** Ms Hinchey, Counsel Assisting the Panel, pointed out that there was a greater connection in this case between the offending behaviour of Dr Stephanopoulos in the workplace than there was in respect of Mr Provan. She submitted that the Panel's determinations should take into account:

- the serious nature of the behaviour involved;
- the need to uphold the standards and protect the reputation of the profession;
- the need to maintain public confidence in the profession; and
- the maintenance of standards within and the reputation of the profession.

**[110]** Ms Hinchey submitted that the considerations which the Panel must take into account would be appropriately addressed by:

- requiring Dr Stephanopoulos to continue to undergo treatment with Dr Glaser;
- reprimanding Dr Stephanopoulos; and either
  - continuing Dr Stephanopoulos' suspension for a specified period; or
  - cancelling Dr Stephanopoulos' registration and disqualifying him from applying for registration for a specified period.

**[111]** Ms Hinchey argued that, although the situation of Dr Stephanopoulos was of a kind prone to generate emotional reaction, the Panel should only take into account the perspective of the well informed member of the public had they been apprised of all the material before the Panel. She observed that the presence of Dr Stephanopoulos' name on the Sex Offenders Register does not make his offending any worse; it is simply a consequence of having been convicted of the offence of possession of child pornography. She contended that the principle of parsimony should apply to the determination imposed by the Panel – that it should do no more than is necessary to protect the public and uphold the reputation of the profession of medicine.

**[112]** Ms Hinchey submitted that the Panel could conclude that its determination need not address an ongoing risk posed to the public by Dr Stephanopoulos on the basis of the evidence from Dr Glaser and Professor Ogloff. However, she drew attention to the importance of general deterrence in the context of offending of the kind engaged in by Dr Stephanopoulos. She observed that there were considerations in favour of the Panel extending the period of suspension of registration of Dr Stephanopoulos at least until his suspended jail sentence has concluded.

## The Law as to Determinations

[113] The function of a determination under the Act is protective, not punitive<sup>41</sup>. This means that the practitioner's shame, the personal ordeal of the practitioner, the absence of any other blemish and similar "diminish in weight, if indeed they are left with any substance at all."<sup>42</sup> The public interest in the practitioner's continuing in practice must be weighed against the public interest in protecting clients from any repetition of the conduct exhibited in this case<sup>43</sup>. The question of the likelihood of repetition is central to the imposition of an order. Indeed, Gillard J found error in a disciplinary disposition by reason of the Psychologists Registration Board having failed to appreciate adequately the function of its imposition of orders: "Nowhere in the reasons is any mention made of the question of the likelihood of repetition whether he had learned from his experience of being the subject of a complaint and later an enquiry and whether there was any need at all to protect the public from the professional activities of the appellant."<sup>44</sup>

[114] However, it is clear that an aspect of the exercise of the Board's supervisory jurisdiction involves an imposition of a determination that will deter both the particular practitioner and others from like conduct. This is a key component of the Board's obligation to protect the public by stating clearly what constitute unacceptable and acceptable forms of behaviour on the part of medical practitioners. As Sheller JA held in *Law Society of New South Wales v Bannister*<sup>45</sup>:

"the Tribunal must also act so as to deter the offender in the future and any other practitioner minded to behave in like manner. ... Subjective considerations which would mitigate the sentence imposed by a criminal court may be significant if the protective exercise being undertaken by the Tribunal requires that they be taken into account. For example, a solicitor who reports his misconduct to the Law Society immediately may be treated differently from one who does not, simply to encourage solicitors guilty of misconduct promptly to report it. On the whole, however, mitigating circumstances are of considerably less significance than in the criminal sentencing process."

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<sup>41</sup>*Morris v Psychologists Registration Board*, unreported, Supreme Court of Victoria, 19 November 1997 per Harper J at p12; *Mullany v Psychologists Registration Board*, unreported, Supreme Court of Victoria, 22 December 1997 per Gillard J at p12. In the context of medical practitioners, see *Health Care Complaints Commission v Litchfield* (1997) 41 NSWLR 630; *Purnell v Medical Board of Queensland* [1999] 1 Qd R 362 (CA). In the context of legal practitioners, see *Clyne v NSW Bar Association* (1960) 104 CLR 186 at 201-202; *New South Wales Bar Association v Evatt* (1968) 117 CLR 177 at 183-4; *Law Society of NSW v Bannister*, unreported, NSW Court of Appeal, 27 August 1993 per Gleeson CJ, Handley and Sheller JJA.

<sup>42</sup>*Buttsworth v Walton*, unreported, NSW Court of Appeal, 19 December 1991 at p15 per Samuels JA.

<sup>43</sup>*Buttsworth v Walton*, unreported, NSW Court of Appeal, 19 December 1991 at p15 per Samuels JA.

<sup>44</sup>*Mullany v Psychologists Registration Board*, unreported, Supreme Court of Victoria, 22 December 1997 per Gillard J at p13.

<sup>45</sup>Unreported, NSW Court of Appeal, 27 August 1993.

[115] Likewise, Doyle CJ in *Craig v Medical Board of South Australia*<sup>46</sup> observed:

[43] ... sometimes, the protection of the public will require the making of an order with a greater adverse effect on the practitioner than might be warranted if punishment alone were the relevant consideration ...

[46] In the case of a professional disciplinary tribunal, an obvious type of order protective of the public is an order cancelling the registration or recognition of a person as a member of a profession. Such an order removed the right to practise in the profession, thereby protecting the public against a person found unfit to be a practitioner. And, ... such order will be made even though, if punishment of the practitioner were the only consideration, considerations of mercy might lead to a less severe order.

[47] In other cases the protection of the public or the public interest may justify an order intended to bring home to the practitioner the seriousness of the practitioner's departure from professional standards, and intended to deter the practitioner from any further departure. A fine might well be imposed with this object. ... An order might also be made in professional disciplinary proceedings to emphasise to other members of the profession, or to reassure the public, that a certain type of conduct is not acceptable professional conduct. In the latter case the order is made in part to protect the profession, by demonstrating that the profession does not allow certain conduct. This, in the end, is also in the public interest.

[48] The protection of the public has various aspects. The public may be protected by preventing a person from practising a profession, by limiting the right to practice, or by making it clear that certain conduct is not acceptable."

### Other Relevant Determinations

[117] The Panel has had regard to practices in relation to the imposition of determinations by comparable bodies.

[118] The approach of the United Kingdom's General Medical Council's Fitness to Practise Committees is affected by the decision of the Court of Appeal in *R v Oliver*<sup>47</sup> in which Rose LJ, in giving the judgment of the court, adopted, with only minor alterations, the Sentencing Advisory Panel's method for analysing material in order to determine the seriousness of offences involving downloading child pornography from the Internet. Analysis takes place according to five levels of description of offending behaviour, in ascending degree of seriousness:

- Level 1 covers "images depicting erotic posing with no sexual activity".
- Level 2, "sexual activity between children, or solo masturbation by a child".

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<sup>46</sup> [12001] SASC 169 at [43]-[48].

<sup>47</sup> [2003] 1 Cr App R 463; see too *DPP v Loving* [2006] IECCA 28.

- Level 3, "non-penetrative sexual activity between adults and children".
- Level 4, "penetrative sexual activity between children and adults".
- Level 5, "sadism or bestiality".

**[119]** The Panel in this matter find this a useful typology of such offending and we propose to apply it in the case before us. We observe that the images on Dr Stephanopoulos' computers and on the disc in his car principally fall within Level 1, while some fall within Level 2.

**[120]** In *Council for the Regulation of Health Care Professions v General Dental Council*<sup>48</sup> Newman J was called upon to consider the decision of a Professional Conduct Committee of the General Dental Council which suspended a dentist for twelve months after he had been sentenced to a Community Rehabilitation Order for three years concurrent on each of twelve counts of incitement in relation to child pornography. He was ordered to remain on the Sex Offenders Register for five years and was prohibited from unsupervised access to children under sixteen years. Further, it was a condition of the order that the dentist participate in a sex offenders' treatment programme.

**[121]** The material seized from the dentist was classified in accordance with the *Oliver* schema as follows: Level 1: 672 images; Level 2: 416 images; Level 3: 517 images; Level 4: 1,176 images; and Level 5: 22 images. The dentist's explanation for his resort to child pornography was that he had commenced watching "normal pornography", as he described it, in 1994 and thereafter there had been many occasions when, for various personal reasons including family illness and similar pressures, he watched pornography. Later, after 1998, there were many reasons why he became very depressed. When this condition afflicted him, he would have further resort to pornography because he was looking for more and more extreme stimuli. He succeeded in locating such material and eventually found that if he went to an uncensored newsgroup he could get any kind of pornography. He asserted that he did not get any great pleasure or indeed any pleasure out of it. It had what he regarded as a "numbing" effect upon him; it helped him to cope. In this regard his explanations bear parallels to those advanced by Dr Stephanopoulos. The dentist explained that at the time of his offending he did not believe he was in a normal frame of mind. He believed he was using pornography as an escape route to a fantasy world to get away from reality.

**[122]** Newman J declared that he was satisfied the Committee did not sufficiently consider the significance of the sentence which had been imposed by the Crown Court:

"His duty of disclosure to his patients would require that patients were informed of the sentence and the conditions attached to it. I am satisfied that, as a general principle, where a practitioner has been

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<sup>48</sup> [2005] EWHC 87 (Admin).

convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.”

This Panel takes particular account of this reasoning.

- [123] In *Re Pritchard*<sup>49</sup> the question before the Fitness to Practise Panel of the General Medical Council was the appropriate disposition for a medical practitioner who had been convicted of seven counts of attempting to make an indecent photograph of a child, contrary to s(1)(1) of the *Criminal Attempts Act 1981* (UK), and sentenced to a community rehabilitation order for two years with a condition that he comply with any assessment or programme to address his offending behaviour as directed by the National Probation Service and also that he register under s92 of the *Sexual Offences Act 2003* (UK).
- [124] The Panel stated that it considered the practitioner’s offending to be an extremely serious matter “which undermines public confidence in the medical profession and damages its reputation. The public are entitled to expect that a registered medical practitioner will conduct himself or herself in a professional manner, even when the doctor’s actions do not directly affect patients.” It determined that taking no action and concluding the case with a reprimand would not have been appropriate. It also determined that in the circumstances of the case no conditions that it could impose would have been appropriate and that a period of suspension would not be sufficient to uphold public confidence in the medical profession: “Dr Pritchard has demonstrated conduct that is fundamentally incompatible with being a registered medical practitioner. Any conviction for child pornography against a registered medical practitioner is a matter of grave concern because it involves such a fundamental breach of patients’ trust in doctors.” The Panel was influenced by learning from a pre-sentencing report submitted to it that Dr Pritchard did not demonstrate an understanding of the harm involved in his behaviour. The report recorded concerns that there was a risk of re-offending. This contributed to the conclusion of the Panel that only erasure of Dr Pritchard’s name from the Medical Register would be appropriate and proportionate.
- [125] The decision is one of a number of examples of the importance attributed by disciplinary bodies and the courts to the existence of insight on the part of a practitioner.
- [126] In *Re Watson*<sup>50</sup>, the question that arose for a Fitness to Practise Panel was as to the appropriate disposition for a medical practitioner who had been convicted of 11 counts of distributing indecent photographs or pseudo-

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<sup>49</sup> Unreported, Fitness to Practise Committee, 6 May 2005, [http://www.gmc-uk.org/concerns/decisions/search\\_database/ftp\\_panel\\_pritchard\\_20050506.asp](http://www.gmc-uk.org/concerns/decisions/search_database/ftp_panel_pritchard_20050506.asp)

<sup>50</sup> Unreported, Fitness to Practise Panel, 11 November 2005, [http://www.gmc-uk.org/concerns/decisions/search\\_database/ftp\\_panel\\_watson\\_20051111.asp](http://www.gmc-uk.org/concerns/decisions/search_database/ftp_panel_watson_20051111.asp)

photographs of children, and 11 counts of possessing indecent photographs or pseudo-photographs of children for distribution, and consequently was sentenced to two years imprisonment, and ordered to sign onto the Sex Offenders Register for a period of 10 years. The Panel applied the decision of Newman J in *Regulation of Health Care Professionals v General Dental Council* by identifying the nature and gravity of the practitioner's criminal offending and the extent of the offender's involvement, including any aggravating features.

[127] The Panel took into account that, following Dr Watson's arrest, his house was searched and 604 pornographic images were recovered. These images spanned all five of the levels outlined in the case of *R v Oliver* with 300 at level 1, 59 at level 2, 61 at level 3, 178 at level 4, depicting images involving sexual penetration of very young children, and 6 at level 5, the most serious category. These were deliberately downloaded and stored by Dr Watson and then attached to e-mails, which then were traded on an internet chatroom.

[128] The Panel took into account the sentencing remarks made at the criminal trial in which the judge described the images as "very disturbing" and stated that, in his view, "the downloading of such material is of course more serious than simply viewing it, but the trading of those images, particularly at this level of depravity is something that proliferates the spread of this kind of material." The Panel commented that:

"Any indecent image of a child represents abuse. Anyone who views such material helps to perpetuate a cycle of exploitation of children. The public expects appropriate standards of behaviour from doctors and is entitled to expect that a registered practitioner will conduct himself in a professional manner, even when the doctor's actions do not directly affect patients. Dr Watson has fallen seriously below those standards and the Panel has no doubt that he has damaged the reputation of, and undermined confidence in, the medical profession by his conduct. ... The Panel considers that a profession's most valuable asset is its collective reputation and the confidence it inspires in members of the public. It has therefore also borne in mind the words of Lord Bingham, Master of the Rolls in the case of *Bolton v Law Society*, quoted in the Privy Council case of *Dr Gupta (2001)*: "The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price."

[129] The Panel gave particular weight to the following passages in the Indicative Sanctions Guidance at section 2(2):

"8. Child pornography involves the exploitation or abuse of a child. Accessing, storing or distributing such material is illegal and regarded in society as morally unacceptable. For these reasons any involvement in child pornography by a registered medical practitioner raises the question whether the public interest demands that his or her registration be affected.

10. Whilst the courts properly distinguish between degrees of seriousness, the Council considers any conviction for child pornography against a registered medical practitioner to be a matter of

grave concern because it involves such a fundamental breach of patients' trust in doctors and inevitably brings the profession into disrepute. ....”

[130] The Panel took into account the seriousness of the offences of which Dr Watson was convicted, that Dr Watson not only downloaded indecent images but then traded the images with other like minded people, and the judge's sentencing remarks at his trial. It concluded that his behaviour was fundamentally incompatible with his remaining a registered medical practitioner and determined that his name be erased from the Medical Register.

[131] In *Re Hill*<sup>51</sup> a Fitness to Practise Panel was called upon to deal with a medical practitioner who had been convicted on 12 counts of taking indecent photographs/pseudo photographs of a child and four counts of possessing indecent photographs/pseudo photographs of a child and sentenced to two years imprisonment with an extended licence period of three years; a Sexual Offences Prevention Order until further order; was disqualified from working with children for life; and was required to register under s92 of the *Sexual Offences Act 2003* (UK) indefinitely. It was submitted on Dr Hill's behalf that he had not taken original films of children, nor directly abused children. It was also submitted that he downloaded the images purely for his own use and that they were not distributed or shared with others. The Panel took into account the sentencing remarks made at the criminal trial in which the judge described the images at levels 4 and 5 he had viewed as “sickening”. He also stated that, in his view, Dr Hill had a deviant sexual interest in children and that, based on the probation service reports, there was a considerable risk that Dr Hill would re-offend. Dr Hill's name was erased from the Medical Register.

[132] In *Re Morton*<sup>52</sup> a Fitness to Practise Panel considered the propriety for ongoing registration of a medical practitioner who had been arrested in December 2002 for the downloading of child pornographic images in 1999. He pleaded guilty to an offence under s52(1)(A) of the *Civic Government (Scotland) Act 1982* and a probation order for three years was imposed with a special condition that he attend a local Sex Offenders Treatment Programme (Tay Project) and his contact with children was restricted. He was required to remain on the Sex Offenders Register for three years.

[133] The Panel observed that the images in this instance fell into level 2. It took into account that the criminal offending occurred six years previously when the practitioner was a 19 year old student. Thus the categorisation bears some similarities with the case of Dr Stephanopoulos, as does the historical nature of the offending by reason of the passage of time by the time of the disciplinary hearing imposing its determinations. Dr Morton acknowledged his wrongdoing in that he conceded he had breached the trust that members of the public are entitled to expect from the medical profession and also appreciated the abuse suffered by the children involved in these images. He informed the Panel that he viewed fewer than 10 images and stated that he

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<sup>51</sup> Unreported, Fitness to Practise Panel, 1 September 2005: [http://www.gmc-uk.org/concerns/decisions/search\\_database/ftp\\_panel\\_hill\\_20050901.asp](http://www.gmc-uk.org/concerns/decisions/search_database/ftp_panel_hill_20050901.asp)

<sup>52</sup> Unreported, Fitness to Practise Panel, 7 July 2005: [http://www.gmc-uk.org/concerns/decisions/search\\_database/ftp\\_panel\\_morton\\_20050707.asp](http://www.gmc-uk.org/concerns/decisions/search_database/ftp_panel_morton_20050707.asp)

had not committed any further offences of this nature. The Panel noted that he was being monitored by multiple agencies and that he had been fully compliant with all restrictions and obligations placed on him.

**[134]** The Panel expressed the view that Dr Morton's actions had been premeditated in that he purposefully paid to view child pornographic images using his credit card. It was concerned that he had admitted to continuing to view adult pornography via the Internet, especially as this was viewed as high-risk behaviour by his social worker. However, in part because it concluded that he had gained insight into what he had done, acknowledged that it was wholly wrong and appreciated the harm which was caused to the children involved, the Panel took what it classified as an "extraordinary" step and restricted itself to imposing a 12 month suspension. This Panel identifies some significant parallels between the Stephanopoulos case and that of Dr Morton, although it notes that the evidence before it suggests a high level of insight on the part of Dr Stephanopoulos and that he refrained latterly from any viewing of pornography.

**[135]** In New Zealand the Health Practitioners Disciplinary Tribunal has dealt with one case involving possession of child pornography<sup>53</sup>. Nurse Derecourt was charged with contravention of s131 of the *Films, Videos and Publications Classification Act 1993* (NZ) by having in his possession two video recordings containing footage of sexual acts associated with urination and excrement and/or sexual acts involving children as young as six years of age as well as two printouts showing humans involved in sexual acts with animals. He was convicted in the Rotorua District Court following guilty pleas and fined \$750 in relation to each offence.

**[136]** The Tribunal found that the material found in Mr Derecourt's possession was "highly offensive, degrading and injurious to children. It is totally unacceptable for any health professional to possess material of the kind found in Mr Derecourt's home in July 2001." It found it "utterly repugnant for a nurse to have in their possession material depicting sex with children" and observed that "Members of the nursing profession are dedicated to the care and well being of patients and others in our community. Mr Derecourt's conduct completely offends these fundamental objectives of nursing. By any analysis Mr Derecourt's actions brought or were likely to bring discredit to the nursing profession." It accepted that he had been punished in the District Court but noted that "his conduct was very serious, and so far removed from the standards expected of a nurse that a disciplinary sanction must be imposed for the purposes of maintaining professional standards and protecting the community."

**[137]** The Tribunal found Mr Derecourt to have engaged in professional misconduct. It noted that he had practised as a nurse for 25 years without blemish, that he had been deeply affected by the laying of the charges and been treated for grief and depression, that his offending had taken place some four years previously and that he had exhibited apparently genuine remorse for his conduct. It commented that "In normal circumstances, a nurse found in possession of the materials located in Mr Derecourt's house in July 2001 could expect to have their registration cancelled for a very lengthy

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<sup>53</sup> *Re Derecourt*, unreported, Health Practitioners Disciplinary Tribunal of New Zealand, 28 July 2005, 14/Nur/05/06P, <http://www.hpdt.org.nz/portals/0/Nur0506pfindings.pdf>

period.”<sup>54</sup> It stated that it gave careful consideration to imposing a penalty less severe than deregistration, in particular, to the option of a suspension and conditions on his registration. However, it concluded that Mr Derecourt’s offending was so serious that it was bound to impose the maximum penalty available under the Act and deregistered him.

**[138]** The Tribunal was not unanimous about the minimum time which should pass before Mr Derecourt should be permitted to apply for re-registration. Bearing in mind the various mitigating factors, the majority of the Tribunal recommended Mr Derecourt not apply for re-registration until six months after the date of its decision. It commented that “This recommendation should not be construed as a finite period of cancellation of Mr Derecourt’s registration.” One member of the Tribunal concluded that Mr Derecourt should not apply for re-registration for at least twelve months from the date of this decision. All members of the Tribunal found that special conditions should be met before the Council consider any application by Mr Derecourt for re-registration:

“The Tribunal believes it is necessary for Mr Derecourt to be assessed by either a psychologist or psychiatrist approved by the Council and undertake any therapy recommended by that psychologist or psychiatrist before he is re-registered. The purpose of this condition is to ensure that the Council is satisfied Mr Derecourt is a fit and proper person to be reregistered as a nurse.”

**[139]** In Victoria two previous disciplinary panels have been called upon to deal with health practitioners who have been convicted of possession of child pornography.

**[140]** In *Re Dr Nicholas Kirmos*<sup>55</sup>, the Dental Practice Board imposed determinations on a registered dentist who had been found guilty of the offences of stalking and possession of child pornography. It found him to have engaged in unprofessional conduct of a serious nature under s3(k) of the *Dental Practice Act 1999 (Vic)* and reprimanded him, fined him \$2,500 and imposed the following conditions, limitations and restrictions upon his registration:

“(1) For a period of two years from 1 September 2004 Dr Kirmos cannot engage in the practice of dentistry, whether for fee or otherwise, unless he is working in an employee capacity employed by a person or entity independent of Dr Kirmos.

(2) Dr Kirmos will fully inform any prospective employer of the facts and circumstances surrounding the findings of guilt as to the indictable offences of stalking and possession of child pornography. Without limiting the generality of the foregoing, Dr Kirmos must, at the very least, provide to any prospective employer the following:

- The summary of the sentencing remarks of His Honour Judge Williams of the County Court in the Director of Public Prosecutions’ unsuccessful appeal made 17 August 2004 prepared by Mr Howard QC and submitted to the Panel;
- A copy of the undertaking given by Dr Kirmos to the Court dated 17 August 2004; and

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<sup>54</sup> Ibid, at [52].

<sup>55</sup> [2004] DPBY 4; [http://www.dentprac.vic.gov.au/docs/dec\\_kirmos.pdf](http://www.dentprac.vic.gov.au/docs/dec_kirmos.pdf)

- A copy of this decision made by the Panel including the Findings, Determination and Reasons”.

**[141]** It is pertinent that the Court released Dr Kirmos on an undertaking to be of good behaviour for two years and provided for two conditions which included his ongoing treatment from a psychiatrist. The psychiatrist involved satisfied the Panel of the Dental Practice Board that the offending by Dr Kirmos took place in the context of psychiatric illness, that his illness did not enhance the risk of his reoffending and that Dr Kirmos did not constitute a greater threat of sexually deviant behaviour in the clinical setting than any of his peers.

**[142]** In *Re Provan*<sup>56</sup> the Psychologists Registration Board dealt with a former psychologist who had paid for and been found in possession of child pornography. He had been convicted and placed on a two year community based order. The level of pornography was high in that it depicted minors engaged in unequivocal penetrative sexual activity. While a psychiatrist found Mr Provan to have acquired a level of insight in relation to his offending, she also expressed the opinion that his offending was related to his mental state which was not stable. Perhaps, most importantly, she also informed the Panel that Mr Provan suffered from a paraphilic disorder with paedophilic and hebephilic arousal patterns.

**[143]** The Panel had regard to:

- The nature of Mr Provan’s conduct;
- The extent of his conduct;
- His attitude toward his offending;
- The steps that he has taken to reduce the likelihood of its repetition;
- Expert evidence about any medical condition that has led to his conduct;
- Expert evidence about his prognosis and risk factors for recidivism;
- Those steps that need to be taken to protect the community against the risk of his recidivism; and
- Those steps that need to be taken to uphold the standing of the profession in the face of his conduct.

**[144]** This Panel is inclined to apply the considerations articulated in the *Provan* decision.

**[145]** Had Mr Provan still been registered, the Psychologists Registration Board Panel stated that it would have had no hesitation in removing his right to be registered in order to protect the community from the significant ongoing risk that he posed in light of his ongoing illness. His depressive illness, a trigger to his criminal offending, remained extant and his prognosis for it was uncertain. In addition, he had a paraphilic illness with paedophilic and hebephilic sexual focuses. The Panel noted that while Mr Provan had acquired insight into the impact of his behaviour and had expressed seemingly genuine empathy for the children whose images he had paid for, stored and downloaded onto the hard disc of his computer, there remained a significant prospect of his repeating his behaviour. Were he still to have been registered, it stated that deterrence of the psychologist would have figured prominently in any determination. So too would the need to deter other psychologists inclined to

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<sup>56</sup> [2005] PRBD (Vic) 3; [http://www.psychreg.vic.gov.au/pdf/decision\\_20051205.pdf](http://www.psychreg.vic.gov.au/pdf/decision_20051205.pdf)

engage in comparable conduct. This Panel observes that the circumstances of Mr Provan differ significantly from those of Dr Stephanopoulos.

### **The Panel's Reasons for its Determinations**

[146] The Panel has given lengthy and anxious consideration to the appropriate determinations in this matter. It is conscious that the conduct of Dr Stephanopoulos is such as to lead to an easy knee-jerk reaction which focuses upon the nature of the material that Dr Stephanopoulos has pleaded guilty to viewing, downloading and hoarding. As observed by the General Medical Council, such behaviour on its face is incompatible with ongoing registration on the part of a medical practitioner.

[147] The function of this Panel was summed up by Gillard J in *Ha v Pharmacy Board of Victoria*<sup>57</sup>:

“to ensure that a member of the profession ... in this State adheres to the high standards expected of a member of the profession. The Board does not sit as a court of law. Its function is not to uphold the law or punish those who may transgress any law in this State. The appellant has committed breaches of the criminal law, and has been dealt with by the courts and punished accordingly. The Board, when imposing a penalty after a finding of professional misconduct, is not concerned with punishment. The penalty powers are there primarily for the protection of the public and to protect the reputation of the profession itself.”

[148] Thus the task of the Panel is to identify what, if anything, needs to be done by way of a determination to protect members of the general community against Dr Stephanopoulos and to determine what needs to be done in order to protect the reputation and standing of the profession itself.

[149] The courts latterly have placed particular emphasis on ensuring that practitioners do not present an ongoing threat to members of the public. Thus, in *Ha v Pharmacy Board of Victoria* (where a pharmacist had sexually molested two vulnerable applicants for employment) and *A Solicitor v Council of the Law Society of New South Wales*<sup>58</sup> (where a solicitor had indecently assaulted his stepdaughter), Gillard J of the Victorian Supreme Court and the High Court, respectively, were prepared to allow the practitioner to remain in practice upon being satisfied by expert evidence that they were not going to repeat their sexually unacceptable behaviour.

[150] Other than these decisions, there is little guidance for this Panel as to the determination it should impose where it is similarly satisfied that a practitioner is unlikely to offend and yet his or her behaviour is grossly unacceptable by reference to contemporary community standards and has brought the profession into undeserved disrepute. To the extent that there are relevant parallels, it has had regard to decisions of United Kingdom Fitness to Practise Panels, United Kingdom courts, the New Zealand Health Practitioners

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<sup>57</sup> [2002] VSC 322 at [70]–[72].

<sup>58</sup> [2004] HCA 1.

Disciplinary Tribunal and decisions of other health practitioner board formal hearing panels in Victoria. In general it endorses the approach of the General Medical Council in acknowledging that whilst the courts properly distinguish between degrees of seriousness, any conviction for child pornography against a registered medical practitioner is a matter of grave concern because it involves such a fundamental breach of patients' trust in doctors and inevitably brings the profession into significant disrepute. The burden lies heavily upon a doctor convicted of possession of child pornography to establish exceptional circumstances as to why he or she should remain registered.

- [151] It is appropriate for the Panel to have close regard to the actual conduct engaged in by the practitioner, as well as to the risk posed in an ongoing sense by the practitioner, as well as what needs to be done to maintain standards within the profession (and discourage comparable behaviour) and to sustain community confidence in the profession.
- [152] The substance of and very substantial number of images downloaded and hoarded by Dr Stephanopoulos are disgusting and distressing to any decent member of the community. They were the product of pornographers indifferent to the wellbeing of the hundreds of children whose innocence they corrupted. As a community we abhor pornography that involves children and have stated very clearly through our criminal legislation and the cases that have interpreted it<sup>59</sup> that we are deeply concerned and condemnatory not just about those who produce such material but also those who possess it, whether that be for their own deviant gratification or for their financial gain.
- [153] It is relevant that Dr Stephanopoulos downloaded a vast array of images of young children in sexually explicit poses. While the material in respect of which he was charged spans but three months of 2003, the numbers of images are great and their character unequivocally paedophilic and hebephilic. It is a nonsense to contemplate that Dr Stephanopoulos did not harbour some feelings of sexual interest in children at the time. He did not collect images of buildings, fish or chess pieces. He chose, on repeated occasions, to look at, download, store and transport back to his home computer images of children.
- [154] It is a reality that for a time Dr Stephanopoulos became obsessed by and addicted to pornography. A portion of such pornography was illegal because it involved children and contravened s70(1) of the *Crimes Act 1958* (Vic).
- [155] However, as the many English decisions on the subject have observed, it is necessary to locate his conduct on the spectrum of heinousness. This has nothing to do with justifying it or even explaining it. It simply identifies how far along the spectrum of unacceptability the conduct of Dr Stephanopoulos is to be found. Utilising the helpful scale of such conduct set out by the Court of Appeal in *R v Oliver*<sup>60</sup>, the material to be found on the computers of Dr Stephanopoulos is at the lower end of such material – levels 1 and 2. This is presumably because he exercised a level of self-control, a quality we were informed by Dr Glaser that he is able to exercise effectively. He refrained from purchasing the harder core material that would have been available for him

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<sup>59</sup> See eg *R v Curtain* [2001] VSCA 156 at [25]; see also *R v Jongsmā* [2004] VSCA 218; *Dodge v The Queen* (2002) 134 A.Crim.R. 435; *G v The State of Western Australia* [2005] WASCA 150.

<sup>60</sup> [2003] 1 Cr App R 463; see too *DPP v Loving* [2006] IECCA 28.

had he provided his credit card to the purveyors of the pornography. Had his level been in levels 4 and 5 of the *Oliver* scale he would have been hard pressed indeed to convince this Panel that he should resume a place on the medical register. Instead, what he did was to collect free images available to him from the Internet. Once he commenced to view the sites which were soliciting his business, he was bombarded by “pop-ups”, offering more and different forms of child pornographic material. His response was to download the images, by clicking “copy” on his computer and placing them on his hard disc. In short, he became the target of the child pornographers as they solicited him every time he utilised the computer which had been made available for the neurosurgery registrars at the Monash Medical Centre.

**[156]** We stress that such observations are not to empathise in any way with Dr Stephanopoulos or to mitigate the seriousness of his criminal conduct over a period of three months. He could have switched off the computer when assailed with the offensive images of which he had made himself a target. He could have concentrated on his work or refrained from using the computer when work requirements did not necessitate it. He could have initiated steps to have the computer cleaned. He could have instigated screening measures to stop the pop-ups. Indeed, that was his responsibility so that his colleagues were not afflicted with the consequences of his undisciplined and sexually intemperate meanderings through cyberspace. Instead what he did was to give more and more encouragement to the child pornographers to tempt him further with their products.

**[157]** Moreover, Dr Stephanopoulos was not just a voyeur; he did not just look. He repeatedly downloaded the “tasters” that were made available to him. This meant that he entered physically into possession of vast numbers of illegal images.

**[158]** There are two further important elements about what Dr Stephanopoulos actually did. He took the images to his residence for his “home collection”. He did not term it in such words but there is no other way of describing it. Thus his possession spanned the shared work computer, discs in his car and his home computer (which was not connected to the Internet). How often he looked at the images he had collected cannot be ascertained from the examination of the computers.

**[159]** Further, it needs to be observed that the illegal conduct of Dr Stephanopoulos principally occurred at work. This is significant as it locates his conduct in the professional environment<sup>61</sup>. It was in these circumstances that it was discovered and in due course communicated, quite properly, to the Board. His criminal conduct in part was committed in the workplace. It was available to his colleagues and committed in their very midst while he was between surgical procedures. This in itself is disturbing but provides an insight into his obsessive, distracted and addicted mindset at the time.

**[160]** It is clear enough that during the period of his criminal offending Dr Stephanopoulos was stressed and was working exceptionally hard. However, he was far from alone in this plight and, importantly, the overwhelming majority of his colleagues, who worked as hard or harder than he, did not resort to the illegal forms of stress relief in which Dr Stephanopoulos indulged. He made choices and then did not have the moral wherewithal to

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<sup>61</sup> See *Roylance v General Medical Council* [1999] UKPC 16.

extricate himself from the patterns of unlawful and unethical behaviour which he had set up for himself.

- [161] The expert evidence before the Panel is that Dr Stephanopoulos' pornography viewing habits were the product of anxiety and stress, rather than a paedophilic disorder. His resort to child pornography was a subset, and a small subset, of his inability to maintain balance in his life and to cope with the exigencies of the workplace. We have already characterised the seriousness and unacceptability of his behaviour. At the time it would appear that he rationalised what he was doing and took few measures at all to cover up his conduct. Not surprisingly, it was not long before he was caught. It may be that at some level that was what he wanted. However, once again, this does not exculpate him or significantly mitigate the seriousness of his behaviour. What is important is that the uncontradicted and unanimous evidence from highly reputable mental health professionals is that Dr Stephanopoulos is not a paedophile.
- [162] What Dr Stephanopoulos has done since being apprehended as a criminal offender is important, as it given an insight into the likelihood of his recidivism and into the measures that this Panel needs to adopt as of today's date to protect the Victorian public. So too the Panel must give substantial weight to the professional insights of his treating psychologist and psychiatrist and an assessing forensic psychologist.
- [163] It is tempting for a panel of a regulatory body to emulate the censoriousness of the criminal courts when what they are dealing with essentially is criminal conduct. This is especially so when the conduct falls into the categories of being abhorrent and perverted as was the offending by Dr Stephanopoulos. However, for panels to approach their task in this way is to misconceive their function and to lapse into impermissible and retributive judgmentalism.
- [164] It is the responsibility of a panel to reflect in a sophisticated and balanced way about considerations that are relevant to regulatory bodies, as against those that are within the purview of the criminal courts. Part of that responsibility includes applying community expectations and values, as best it can. A panel must endeavour to achieve the difficult balance between on the one hand protecting the community and upholding the standards and reputation of a profession and, on the other hand, enabling the community, where appropriate, to draw upon the potential contributions of a practitioner who in the past has made serious errors of judgment. Inevitably this involves characterisation of the behaviour, evaluation of what has caused it, and assessment of the likelihood of its being repeated.
- [165] It is not the function of a panel to be punitive, but it is its task to mete out robust determinations where necessary - on occasions to draw lines in the sand in relation to when a practitioner's conduct is such that he or she has forfeited the right to enjoy the benefits and privileges of registration. A component of this declaratory role for panels is to articulate standards, which in one context or another cannot be transgressed without the most serious of consequences. This is an aspect of protecting the community, and the profession. Such statements must be backed up by actions by panels to do that which is necessary to deter other practitioners who might contemplate behaving in a similarly unacceptable way.

- [166] It is relevant too for the censure of a panel such as this to be leavened by humanity and pragmatism. It is a reality that many young professionals make serious errors in judgment at some stage. This in itself does not render them inappropriate for continuing membership of their profession. The real question is whether they can confront with honesty and integrity what has brought about their behaviour, recognise it for what it is, the harm it has caused or has the potential to cause, and take those steps reasonably open to them to avoid repetition of their unprofessional behaviour. As Morris J put it in *Vissenga v Medical Practitioners Board*<sup>62</sup> “neither the public nor the peers of a medical practitioner expect perfection at all times. Human frailty visits every person, including those who are medical practitioners. Reasonable members of the public, and the reasonable peers of medical practitioners, understand this. Reasonable people are tolerant of occasional lapses, particularly if these lapses do not form a consistent course of conduct or, if taken separately, are insufficiently serious to warrant intervention by those charged with acting on behalf of the State.”
- [167] In evaluating the application of Morris J’s remarks to the circumstances of Dr Stephanopoulos, it needs to be said that the conduct of Dr Stephanopoulos was not an “occasional lapse”. It was repeated criminal behaviour indulged in on a prodigious number of occasions over a period of months. This iterated aspect of his behaviour is more than sufficient to characterise it as a “consistent course of conduct”. It was more than the product of human frailty.
- [168] However, the nature and repetition of his behaviour notwithstanding, the response of Dr Stephanopoulos to apprehension and the perspectives of those who have provided him with treatment are very important.
- [169] Dr Stephanopoulos gave evidence before this Panel and was asked a great many questions. Many of them were confronting and, undoubtedly discomfiting. Save in relation to one issue, he was as impressive as anybody in his situation could be. He exhibited a sophisticated understanding of why he had fallen into patterns of pornography addiction. He did not resile from or rationalise or minimise what he had done. Indeed, he recognised the rationalisations which had sustained him at the time of his criminal offending and denounced them without reservation. He did not seek refuge in the fact that he had not paid for child pornography and accepted that it was just as serious to view such images, whether they were paid for or not. He engaged in no cognitive distortions about the involvement of the child victims of the pornographers and accepted that by his behaviour he had given a fillip to the pornographers to continue to ply their criminal business. He expressed suitable concern and remorse for the welfare of the children whose images he had downloaded. In short, his insight was of a high level<sup>63</sup>.
- [170] Dr Stephanopoulos has also identified a wide range of behaviours in which he can engage to make it unlikely that he will revert to criminal conduct. For him this has been a humbling experience and required a complete reframing of his value system and the way he lives his life. His obsessively driven personality meant that he placed undue stresses on himself. They reached a point where he sought refuge in “comforts” and forms of “stress relief” that

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<sup>62</sup> [2004] VCAT 1044 at [33].

<sup>63</sup> Higher than the practitioner in *Re Morton* Unreported, Fitness to Practise Panel, 7 July 2005: [http://www.gmc-uk.org/concerns/decisions/search\\_database/ftp\\_panel\\_morton\\_20050707.asp](http://www.gmc-uk.org/concerns/decisions/search_database/ftp_panel_morton_20050707.asp)

were illegal and completely socially unacceptable. He recognises this and has taken suitable steps to introduce balance and perspective to his life. This would be an easy claim to make but it is apparent from his own evidence and that of others that he has matched the rhetoric by action. His self-initiated rehabilitation and reclamation are well advanced.

- [171] The one exception which we have flagged is in relation to Dr Stephanopoulos' assertion that he never harboured any sexual attraction to the illegal images which he hoarded. It appears that he modified this stance somewhat in communications with Dr Glaser. This Panel does not accept that there was no sexual component to his behaviour. The Panel was initially troubled by the potential for Dr Stephanopoulos to be rationalising in this regard and for there to be lingering and dangerous attractions on his part toward minors. It caused Dr Glaser to be recalled in part to canvass this issue with him. Dr Glaser acknowledged that there is a real possibility that at the time of his offending Dr Stephanopoulos may have had some level of sexual attraction toward children. However, he reassured the Panel that this was overtaken by other motives for his conduct – in particular, escapism and stress relief. In addition, Dr Glaser explained that it is not uncommon for even the most insightful and honest of persons in Dr Stephanopoulos' position to deny this aspect of their offending. He satisfied the Panel that even if there were at some stage an element of sexual attraction to children on the part of Dr Stephanopoulos (and this is the Panel's finding), this does not constitute a major ongoing risk factor. Dr Stephanopoulos' sexual behaviours otherwise have been age-appropriate and normal. He has ceased viewing pornography altogether and has broken the dangerous patterns that he had constructed. At a deep psychological level, it is understandable that the impulses and attractions that motivated him to hoard the illegal images are not fully understood or confronted by him. What matters is that he has set in place systems to guard against his having any resort to such deviant focuses in the future.
- [172] The Panel found the evidence of Dr Glaser particularly impressive and helpful. He is an acknowledged and experienced expert in relation to sexual deviancy. His evidence was fully tested. Ultimately Dr Glaser's carefully thought through analyses of Dr Stephanopoulos' offending behaviour and what he has done since to avoid recidivism have led the Panel to accept his opinions as grounded in sound reasoning and data. It notes that he was supported in his views by both Mr Ridley and Professor Ogloff.
- [173] The evidence from the treating psychologist and psychiatrist of Dr Stephanopoulos supports the proposition that he is not a paedophile or hebephile and that he is a very low risk of reoffending. This is bolstered by his failure to deny or minimise his conduct, his genuine remorse, his empathy for the victims of the makers of the images with which he became preoccupied and the active steps he has taken to live his life differently. Each of the mental health experts has expressed the strong view that it is most unlikely that Dr Stephanopoulos will repeat his criminal conduct. Each person has been cross-examined at length about the tests they have conducted, the clinical examinations they have performed, the methodology that underlies their opinions and alternative inferences that could be drawn from the data available to them. Each has been steadfast in their confidence that Dr Stephanopoulos has learned from his errors, has adopted suitable strategies to avoid reoffending and will not place the community at risk. There is no evidence to contradict their unanimous views. Counsel assisting the Board does not suggest that the Panel should do other than accept their views.

- [174] Further, an impressive array of professionals has supported the claim of Dr Stephanopoulos to return to practice. While some persons strayed into an advocacy role, the Panel was impressed by their consistent accounts of Dr Stephanopoulos' contrition for his errors and his determination to restart his career and bring credit upon his profession. They were at one in describing Dr Stephanopoulos as a medical practitioner of exceptional abilities and dedication, both in his operative work and in his general clinical role. He has already made important contributions to medical practice, in spite of the fact that his training period as a neurosurgeon has not yet concluded. There is every reason to conclude that, if permitted, Dr Stephanopoulos has a great deal to contribute to the health of the Victorian community. It is appropriate for these matters to take their place amongst the factors for balancing by the Panel.
- [175] The task of this Panel is a difficult one. Ultimately, it is persuaded on the basis of compelling and uncontradicted expert evidence that it is highly unlikely that Dr Stephanopoulos will engage in further unprofessional conduct of the kind that has brought him before this Panel. Thus, the situation that faces it is very similar to that which confronted Gillard J in *Ha v The Pharmacy Board of Victoria* and the High Court in *A Solicitor v Council of the Law Society of New South Wales*. The adverse aspects of the pathology of Mr Provan, as dealt with by the Psychologists Registration Board of Victoria, are not present in Dr Stephanopoulos. The nature of Dr Stephanopoulos' offending distinguishes his position from most of the cases that have gone before the General Medical Council in the United Kingdom.
- [176] It is undeniable that Dr Stephanopoulos has damaged the standing of his profession in the public eye and that some will be anxious about his re-entry to the practice of medicine. We trust that they will read the full text of this decision rather than jump to sensationalist positions based on less than the full facts. Ultimately, we have concluded that exceptional circumstances exist which justify his being permitted in due course to return to practice, subject to rigorous long term conditions.
- [177] It seems appropriate to this Panel that Dr Stephanopoulos not return to practice while his suspended sentence is still current<sup>64</sup> It would be inappropriate in the short and medium term for him to work with children. His position on the Sex Offenders Register reinforces our views in this regard. Moreover, a firm message must be given to him and to any other medical practitioner minded to download and hoard child pornography from the vile purveyors, whose produce sadly is available on the Internet, that they will face condign consequences from this Board, as well as the criminal courts, if they do so.
- [178] Accordingly, endeavouring to balance the need to reinforce the need for Dr Stephanopoulos to remain committed to the strategies that he has devised to avoid reoffending, the need to deter other medical practitioners from emulating his conduct and the need to uphold the standing and reputation of the profession of medicine, we propose to impose a fresh suspension on Dr Stephanopoulos precluding him from working as a medical practitioner until 1 March 2007. This will mean that he has been effectively suspended from work since 9 November 2004. We trust that this signals how seriously this Board

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<sup>64</sup> *Council for the Regulation of Health Care Professions v General Dental Council* [2005] EWHC 87 (Admin).

views his conduct. Any repetition would be overwhelmingly likely to forfeit his right to practise on a very longterm or permanent basis.

**[179]** However, the role of this Panel is not to punish. That is the function of the criminal courts. The Magistrates' Court of Victoria has imposed its sentence upon Dr Stephanopoulos. It has sentenced him to imprisonment, suspended the sentence for 15 months, and fined him.

**[180]** By our orders Dr Stephanopoulos will not practise while he is subject to the Magistrates' Court suspended sentence, or for a period thereafter. He will not have the opportunity to treat children, although he states he does not wish to do so, while he is on the Sex Offenders Register, or for a period thereafter. In addition, it is our view that it is important that Dr Stephanopoulos continue to receive professional treatment and guidance. His offending occurred in the context of the adoption of ill-advised work patterns and stress levels that he could not deal with in a socially acceptable way. It was characterised by the development of addictions of which the child pornography component was unlawful. By our orders he will be obliged long term to continue to receive professional assistance so as to minimise the potential for him to revert to work patterns that could create the stressors which facilitated his criminal offending. By this means, too, he will have available to him assistance to maintain balance in his life and reinforcement for his determination to put into practice measures which will minimise the potential for his conducting himself inappropriately in relation to the Internet and any other source of illegal material.

**[181]** The Panel has sought to balance the protection of the public and the need to uphold the reputation and standards of the profession of medicine, with the potential benefit that might accrue to the community from the availability of the expertise of Dr Stephanopoulos.

**[182]** Based in particular upon the evidence of mental health experts and upon the presentation of Dr Stephanopoulos under cross-examination and his conduct since being apprehended, the Panel's determinations are as follows:

- Pursuant to section 45A(2)(c) of the Act, Dr Stephanopoulos is reprimanded for engaging in criminal and unethical conduct of a kind that has brought serious discredit upon the profession of medicine.
- Pursuant to section 55 of the Act, the current suspension of Dr Stephanopoulos' medical registration is removed.
- Pursuant to section 45A(2)(e) of the Act, the following conditions are imposed on Dr Stephanopoulos' medical registration:
  - that he not provide treatment as a medical practitioner to persons under the age of 18 years before 1 January 2015 and thereafter only if so permitted by the Medical Practitioners Board of Victoria after receipt of reports from the Director of Medical Services or other senior practitioner approved by the Board at his workplace and his treating psychiatrist that such an extension to his practice would be safe;

- that until 16 August 2016 he demonstrate each year by statutory declaration forwarded to the Chief Executive Officer of the Board by not later than 30 May that he has continued to co-operate with and receive treatment from Dr Glaser or his nominee (or in default of such nomination, such practitioner as is nominated by the Board) as recommended by Dr Glaser or his nominee (or the Board-nominated practitioner).
- Pursuant to section 45A(2)(g) of the Act, Dr Stephanopoulos' medical registration is further suspended from 17 August 2006 until 1 March 2007, this extending a suspension that effectively commenced on 9 November 2004 when he formally agreed with the Board to cease clinical practice.

**Dr Ian Freckelton**  
**Chairman**

16 August 2006