IN THE MEDICAL TRIBUNAL OF NEW SOUTH WALES

THE MEDICAL PRACTICE ACT 1992

DEPUTY CHAIRPERSON:

HIS HONOUR JUDGE R.H. JUDGE SOLOMON

TRIBUNAL MEMBERS:

DR. M. DIAMOND
DR. L. EDWARDS
MS. J. HOUEN

NO: 40022/01
DR ROGER STEVEN JONES

REASONS FOR DETERMINATION
DATED: 1 JUNE 2005

Pursuant to Clause 6 of Schedule 2 to the Medical Practice Act 1992 the Tribunal has made a Non Publication Order in respect of Patient A and Patient B and any other witness, the naming of whom might lead to the identification of Patient A or Patient B.

The Complaint

1. The Health Care Complaints Commission ("the Commission") complains in its amended complaint ("the complaint") dated 23 March 2003 that Dr. Roger Steven Jones ("the practitioner") has been guilty of unsatisfactory professional conduct and/or professional misconduct within the meaning of s.36 and s.37 of the Medical Practice Act, 1992 ("the Act").

Particulars of the complaint are:

(1) Between about January 1995 and about July 1998 the practitioner engaged in a personal and sexual relationship with patient A;

(2) Following the commencement of the sexual relationship the practitioner continued to treat patient A;

(3) In 1996 the practitioner used the title psychiatrist when he was not entitled to do so;

(4) Between about January 1995 and about July 1998, the practitioner held himself out to patient A to be a psychiatrist when he was not qualified as a psychiatrist;

(5) Between around late December 1998 and around mid-June 2002 the practitioner engaged in an inappropriate personal relationship with patient B.

2. The complaint concerns two patients who are referred to in the Determination as patients A and B. There has been evidence at the hearing which identifies the patients by name, however, for the purpose of this Determination it is not necessary to identify the patients other than by the appellations of patient A and patient B.

The Hearing of the Complaint

3. The complaint was first heard on 17 March 2003. The Medical Tribunal members were His Honour Judge Urquhart, Dr. L. Edwards,

Dr. B. Kotze and Ms. J. Houen. The practitioner was represented by Mr. Pike of Counsel who was instructed by a solicitor who appeared on behalf of the United Medical Protection Limited. Having regard to His Honour's ill-health and subsequent retirement from the bench of the District Court, the Tribunal did not make a Determination regarding the complaint.

4. The practitioner was informed by the Commission on 23 June 2004 that the original Tribunal hearing could not be completed.

5. On 31 December 2004 the practitioner was served with documents including a copy of the same complaint which was the subject of the enquiry before the Medical Tribunal hearing of 17 March 2005.

6. The practitioner was informed at the time of the service of the documents that a fresh hearing of the Medical Tribunal had been listed for 21 March 2005.

7. On 21 March 2005 a differently constituted Medical Tribunal sat to consider the complaint. His Honour Judge Ronald Solomon sat as the Deputy Chairperson of the Tribunal. Dr. M. Diamond sat as a Tribunal member in place of Dr. B. Kotze. Dr. L. Edwards and Ms. J. Houen again sat as members of the Tribunal. The transcript of the proceedings before the Medical Tribunal of 17 March 2003 was tendered in the proceedings as Exhibit D. The Tribunal was satisfied that it had jurisdiction to hearing the matter ***(see Wentworth v. Rogers (No.3) (1986) 6 NSWLR 643 at 653.)***

8. It was decided by the Tribunal that the practitioner’s response to complaint which was annexed to his letter of 7 March 2005 (Exhibit B)

should be tendered into evidence together with the six volumes of documents which had been tendered previously at the Medical Tribunal hearing on 17 March 2003 (Exhibit C).

9. The Tribunal made a suppression order that the names of the patients referred to in the complaint and any material capable of identifying them not be published. There was no suppression order made as to the name of the practitioner.

Background of Practitioner

10. The practitioner was born in the United Kingdom in 1947. The practitioner obtained his primary graduate medical qualifications from St. Andrews University in 1972. In 1974 the practitioner migrated to Australia. The practitioner after 9 months returned to Britain and practised in the fields of obstetrics and gynaecology. The practitioner returned to Australia and practised as a general practitioner in far north Queensland from 1976 to until 1988. The practitioner held the position of Visiting Medical Officer in psychiatry in Cairns. The practitioner moved to Sydney in 1998 and held a position as a psychiatric Registrar with the Illawarra Health Service until 1990. From 1991 to 1994 the practitioner was a medical officer employed by the University of Wollongong. During the latter period the practitioner worked part time in the Illawarra Health Service as a career medical officer. In 1994 to 1996 the practitioner held the position of director of the psychiatric unit at the Shell Harbour Hospital. In 1996 the practitioner practised in the field of community psychiatry and was employed as a career medical

officer by the Shell Harbour Hospital. The practitioner requested the Medical Board to remove his name from the Registry of Medical Practitioners as from 14 March 2003.

Background of Patient A

11. Patient A was born in x x India, on 196x. Patient A married in 199x and immigrated to Australia in 199x with her husband and her daughter who was born in 198x. A convenient psychiatric history up until October 1996 is contained in the social work report of Kalpana Sriram dated 4 October 1996 (Volume 4, page 175 of Exhibit C) in the following terms:

> *"A is suffering from a chronic psychiatric condition which was not treated for many years. At the age of 20 as a married woman, A was paranoid about men following her and making advances to her. In 199x during her early pregnancy A was advised to see a psychiatrist. It appears at this stage she was suffering from an agitated depression. Around this time a family dispute between A and her parents ended unceremoniously and A's father died of a heart failure following this incident. A blames herself for her father's death. During her second pregnancy in 198x, A has been depressed and agitated. At this stage and in the following years she has seen several psychiatrists. She has been diagnosed to be suffering from schizophrenia. It appears A has never been compliant with medication. This is mostly due to lack of insight and the side effects of medication, especially the tremors. A's mental condition became exacerbated since migration to Australia. In 199x separation from her husband resulted in admission to the psychiatric ward in the hospital and subsequently has had 4 admissions and been on a community treatment order until recently."*

12. In 199x patient A moved to x. A further convenient summary of patient A's medical condition is contained in the report of Brett Smout and Dr.

Geoff Fosbrooke dated 19 October 1998 (Volume 5, page 00624, Exhibit C):

> *“Background History*
>
> *A is a 37 year old woman, who immigrated to Australia x years ago from India. She came to Australia with her husband and daughter, and separated from her husband 4 years ago. She is currently unemployed and lives in a Community Housing Scheme.*
>
> *A first came into contact with x Community Health Centre in December 199x, after being referred by Wollongong Community Mental Health Services. She was initially on a 3 month Community Treatment Order but this expired. Her first admission to a psychiatric ward was in 199x and since that time has had 6 admissions to hospital, two to Rozelle Hospital. A has mainly presented with delusional disorder, depression with psychotic features and paranoid state.*
>
> *In the past A has been admitted to hospital expressing suicidal intent, paranoid ideation and risk of harm to her daughter. Prior to the most recent admission, A had smashed a neighbours car windows due to the belief that they were harassing her. She caused herself physical harm and admitted to hitting her daughter on the day before. There have been on-going difficulties with neighbours which appear to have caused A a great deal of distress of the past two years.*
>
> *A does not believe that she has a mental illness requiring treatment and has stated that unless she is under an order she will not accept treatment. She has on two occasions refused the services of x Community Health.*
>
> *On discharge from hospital A plans to focus on providing good parenting for her daughter and maintaining good mental health. In order to provide the least restrictive means of treatment available we request a Community Treatment Order of six (6) months be granted.”*

13. The x Hospital and x Community Mental Health files indicate that patient A received regular depot injections of Flupenthixol up to and including 24 October 2000 (Volume 5, pages 00309 to 00632, Exhibit C).

Treatment of Patient A by the Practitioner

14. The practitioner first treated patient A when she was admitted to the Shell Harbour Psychiatry Unit expressing "suicidal/homicidal ideation – to self plus daughter". On x x 199x patient A was reviewed by the practitioner. The nursing notes record that patient A had been seen by the practitioner in 1995 (Volume 4, page 00048, Exhibit C). On x July 1996 patient A was admitted to Shell Harbour Hospital after taking an overdose of Temazepan. The patient was then scheduled by the practitioner. The practitioner continued to review patient A during 1996 and on x November 1996 wrote to the Department of Housing describing himself as her psychiatrist (Volume 4, page 00194 Exhibit C) in which he supported an application for her to reside at x. Patient A moved to X in February 1997. The practitioner after February 1997 treated patient A spasmodically up until 13 March 1998 on which date he prescribed a prescription of Temazepan for patient A (Volume 1, Tab 11, Patient A's diary page 102(a) Exhibit C).

Patient A's Allegations against the Practitioner

15. The account given by patient A is contained in her Statutory Declaration dated 13 November 1998 (Volume 1, Tab 5 Exhibit C), her statement dated 13 February 2001 (Volume 1, Tab 6 Exhibit C), her letter to the Commission dated 15 September 2001 (Volume 1, Tab 7,

Exhibit C) and her statement 10 September 2002 (Volume 1, Tab 8, Exhibit C).

16. Patient A's account is summarised as follows. In August 1994 patient A came under the care of the practitioner whilst she was an inpatient at Shell Harbour Hospital. The practitioner continued to treat patient A after her discharge from the hospital. In December 1994 the practitioner asked patient A to accompany him to a staff Christmas party. Patient A refused the practitioner's invitation. In December 1994 the patient had a consultation with the practitioner in his professional rooms and at the end of the consultation the practitioner hugged the patient. The practitioner after the consultation drove patient A to her home. During the trip he kissed her and touched her breasts. In about January 1995 the practitioner took patient A to his resident quarters at the Shell Harbour Hospital. The practitioner indicated to patient A that he wished to have sexual intercourse with her. Patient A refused his request. The practitioner eventually had sexual intercourse with patient A after threatening to have her locked up in an institution where the practitioner could administer shock treatment to her.

17. Patient A and the practitioner continued to have a sexual relationship during the time the practitioner treated her in the Illawarra district. In February 1997 patient A moved to x and until January 1998 travelled to the Illawarra district where she had regular sexual intercourse with the practitioner.

18. During 1997 patient A took a series of polaroid photographs of the practitioner which depicted him lying naked on a bed with his penis in an erect state (Exhibit E). Patient A sometime before September 1997 commenced to record telephone conversations between herself and the practitioner and transcripts of those telephone conversations contain references to an ongoing sexual relationship (transcripts Volume 2, 13.1 to Volume 3,13.25, Exhibit C).

19. Patient A made contemporaneous diary entries during the period of her relationship with the practitioner (Volume 1, Tab 11, Exhibit C). The diary entries in part make reference to her meetings with the practitioner. The last reference to a meeting between the practitioner and patient A is 3 June 1998. Patient A annexed to her diary entry of that date a copy of rail tickets to the Illawarra district and return for 3 June 1998 (Volume 1, Tab 11, Exhibit C).

The Practitioner’s Response to Patient A’s Allegations

20. The practitioner referred the Commission's first letter which contained allegations of sexual impropriety on to United Medical Protection Limited and on 5 March 1999, Louise Mallen, a solicitor with United Medical Protection Limited wrote a letter to the Commission (Volume 6, Tab 25, Exhibit C). The letter, deleting the identify of patient A, contained interalia the following:

"A's allegations of sexual impropriety against Dr. Jones are the most serious kind of allegation that can be made against a medical practitioner.

Dr. Jones denies the allegations of sexual impropriety contained in A's statutory declaration and denies that he had an otherwise inappropriate relationship with A.

A relies upon the photographs of Dr. Jones to support her explanation for how the photographs came into existence and how they and the camera came to be in the possession of A. Mrs. Jones corroborates Dr. Jones in this regard. A signed statement by Mrs. Jones will be forwarded to you shortly.

It is clear from the hospital notes that A has for some time laboured under the disability of a severe mental disorder, which causes her to be paranoid and deluded. That disorder is not controlled as A is not a compliant patient. I refer you to the Social Work Report of Kaplana Sriram of Westmead Hospital dated 4 October 1996, which is in the hospital notes. That report states:

> *'A is paranoid and deluded. She does not trust the hospital and psychiatrist. A feels all the health professionals collude with each other and they are out to get her…..*
> *In summary A appears to be entrenched in her paranoid delusions. She is a danger to herself and other and her social reputation is at risk.'*

I refer you to a letter from Janice Axford-Brooks, clinical psychologist, to the x Community Mental Health Team dated 22 August 1997, which refers to report of multiple allegations of a sexual abuse that A has made, which Ms. Axford-Brooks, and other, have attributed to her 'persecutory delusions'. A's allegations of abuse by various members of hospital staff are noted in the hospital records, and indeed in her statutory declaration of 13 November 1998.

It should be noted that it appears from the hospital notes that A has never made any complaints of a sexual nature against Dr. Jones to hospital staff or to Dr. Jones himself.

Summary

It is trite for me to say that the complainant bears the onus of proving the complaint and that the standard of proof is a comfortable satisfaction on the balance of probabilities (Briginshaw v. Briginshaw (1938)60 CLR 336). The Medical

Tribunal in the past has taken into account the complainant's history of mental disorder in determining that the complainant's version of events should not be accepted (see In the Matter of Dr. Maxwell Thomas, Medical Tribunal 25 September 1998 and In the Matter of Dr Prasad Baday, Medical Tribunal 6 June 1996).

I submit therefore that in this case it is incumbent upon the HCCC to take into account the long history of A's chronic paranoid and deluded state, and her non-compliance with treatment. It should also take into account the inconsistencies in the assertions made in her statutory declaration and the clinical notes, for example her assertion that she did not know why she was moved to a house in x.

The HCCC should take into account that Dr. Jones has an unblemished professional record.

A's personal, social and psychiatric history can only invoke sympathy. It is apparent that at all times A has been treated with sympathy and patience by hospital staff and Dr Jones and other employed medical staff, despite her difficult presentation and her lack of compliance. Nevertheless it would cause a grave injustice for the HCCC to prosecute a complaint raised by someone who is chronically paranoid and deluded, in the absence of any objective, independent evidence that the alleged improper conduct took place, and in the face of evidence to support the doctor.

I submit that the HCCC's investigation should be terminated pursuant to Section 39(e) Health Care Complaints Act, 1993".

21. The practitioner prepared a statement on 21 February 1999 (Volume 6, Tab 26, Exhibit C) regarding the allegations of sexual impropriety in which, deleting patient A's identity, he wrote, interalia the following:

"A has suffered from paranoid delusions. There are numerous notes of her claims that her psychiatric counsellors and staff of the hospital are conspiring against her. She has also made numerous allegations of sexual assault against different people. Indeed, at time, she has believed that it is her psychiatric counsellors who have influence people to harass her sexually. I respectfully submit that the false complaint which has been raised by A against me is a manifestation of her delusional disorder. Again I deny that I have had any improper relationship at all with A".

22. The practitioner wrote a letter to the Medical Tribunal of New South Wales on 24 February 2003 in the following terms (Volume 6, Tab 33, Exhibit C):

> *"I Dr Roger Jones advise the Tribunal,*
>
> *I have asked the Medical Board to remove my name from the Register of Medical Practitioners in this State as from 14 March 2003. I do not intend to apply for registration in the future.*
>
> *I admit having had a personal and sexual relationship with Patient A during the period September to November 1997. I did not have a personal and sexual relationship with Patient A in the other periods that have been alleged, and to that extent I deny the complaint.*
>
> *I recognise that to engage in such a relationship was grossly improper.*
>
> *I denied the relationship for reasons of self-protection. I recognise that my conduct in so doing was also highly improper and unethical.*
>
> *I do not intend to give evidence before the Tribunal, for several reasons. First, I recognise that given my misconduct my removal from the Register is mandatory. Secondly, I wish to avoid putting Patient A through the stress of giving evidence before the Tribunal, despite the fact that I deny significant aspects of the complaint.*
>
> *I wish to unreservedly apologise for my misconduct, both to the Tribunal and to Patient A."*

23. On 5 March 2003 Tony Mineo a solicitor employed by United Medical Protection Limited wrote a letter in the following terms (Volume 6, Tab 34, Exhibit C):

> *"I act for Dr. Roger Jones.*
>
> *I advise on 17 March 2003 at the NSW Medical Tribunal:*
>
> *(1) Dr. Jones will be making certain admissions in respect to the Complaint dated 8 October 2001;*

(2) Dr. Jones concedes that these admissions will constitute professional misconduct and unsatisfactory professional conduct warranting his de-registration for a period of time;
(3) Dr. Jones does not wish to put Patient A through the stress of giving evidence and being cross examined;
(4) Dr. Jones will be removing his name from the NSW Medical Register as of 14 March 2003."

24. As indicated in paragraph 3 hereof, at the hearing of the Medical Tribunal on 17 March 2003 the practitioner was represented by a legal practitioner Mr. E. Pike. No evidence was called by the complainant. The practitioner did not give evidence.

25. On 7 March 2005 the practitioner wrote a letter to the Medical Tribunal of New South Wales in the following terms (Exhibit B):

> *"Following legal advice of private counsel plus United Medical Protection I will not be attending the Hearing on 21st March 2005 or be represented but have been directed to send a statement relating to the complaints made.*
>
> *I have not taken this decision lightly or in an attempt to avoid scrutiny or question. I wish to save the Tribunal time and money and have no wish to enter into contentious discussion with the complainants whom I respect.*
>
> *However I must note that I was surprised to hear in November 2004 the re-convening of the Tribunal. The Hearing which took place in March 2003 and the immediate judgement by the Press and TV has resulted in separation from my wife and has caused considerable distress to my sons. I in fact heard nothing from anybody (UMP/HCC/or Medical Tribunal) of any decision or lack of decision made. This has caused a degree of persisting stress, unease and uncertainty of what future to plan.*
>
> *My surprise was heightened by a distressing detention at Sydney Airport on 31st December 2004 whilst waiting for a solicitor from HCCC to deliver the same papers which had previously been sent to me twice by mail in November 2004. HCCC also indicated that UMP had withdrawn from my defence and thus I should seek private advice. UMP later denied this but following prompting by my private counsel they did in fact give me advice and support. Private legal advice was helpful but to restart a valid full and alternative defence was priced well beyond my present financial abilities and hence their pursuance*

of the Medical Protection and thus subsequently their joint advice.

I thank this Tribunal for their deliberation of the enclosed response and request that it if any adverse finding is made that consideration of my 30 active years in medicine and psychiatry be noted and believe that I have served to the best of my ability to help all my patients and support my colleagues and employers. I would like the opportunity in the future to continue serving in medicine and if required would undergo counselling any supervision suggested. Thank you once again for your kind consideration."

26. In his letter to the Medical Tribunal of 7 March 2005 the practitioner included a document "Response to Complaint" in the following terms:

> *"As stated in my previous defence in March 2003 I did not have a sexual relationship with patient A from January 1995 to July 1998. I consider that I have behaved inappropriately with patient B briefly in September 1997.*
>
> *The accusation relating to the above relationship I thought had been unfounded and untrue. The evidence as scrutinised was scurrilous and having to face various presentations via the HCCC from 1998 to 2002 with differing dates on all accusations. Suggestions, for example, that ward staff brought patient A to be me for sexual acts or that I took her to a Christmas party for staff was a blatant fabrication. This had been considered by peer review and found to be so.*
>
> *Patient A moved to Sydney early in 1996 and ceased to be my patient but in August of that year she made further infrequent contacts at times arriving at my supplied accommodation at Shell Harbour Hospital when I was on-call. I returned her to Dapto Railway Station on several occasions and sent her home, but on one occasion I was unable to do so due to the pressure of work and foolishly allowed her to stay in my unit that night, an indiscretion I deeply regret. However from her presentation armed with polaroid cameras and consequent actions was not one of totally innocent infatuation or being mislead by myself. The many telephone calls that I made were at the hospital's request. Patient A was making persistent and numerous telephone calls to the hospital switchboard causing service problems for the hospital. I therefore agreed to telephone her daily. These calls finished when patient A suggested that she would become my second wife and live in my garage. I believe this was in about February 1998. In find it interesting that later I heard that patient A had confided with another therapist/therapist "she was out to get a doctor". Following this*

she recorded our telephone conversations (which must have required much support and advice) which I thought also was illegal to do, or at least be considered in a Tribunal. In retrospect I think that planning and a hidden agenda on her part must have taken place.

Of interest in HCCC reports, enclosed in their documents, I note similar accusations have been made about a police officer, the shopkeeper and a mental health worker. I believe this to be significant.

Section 2

Patient A ceased to be my patient when she moved to Sydney in early 1996 (see above statement).

Section 3/4

This was a misunderstanding by patient A that I professed to be a registered psychiatrist. From 1990 to 2002 (sic). I was employed as a career medical officer in psychiatry. This can be confirmed by contacting Illawarra Health Service, my employer, but I can understand where the mistake has come from. I have worked in psychiatry since December 1973, undergone registrar training in Queensland and from 1977 to 1988 was employed as a VMO in psychiatry by the Queen and Government for the Cairns area and paid a consultant's salary.

Following further training as a registrar in New South Wales in 1988 to 1990 was employed as CMO by the Illawarra Health Service in Psychiatry in 1991. From 1993 to 1995 I was director of/of (sic) psychiatry in Shell Harbour Hospital and from 1995 onwards I played a leading role in community psychiatry in the Illawarra. Also in 1995 to 1996 I was Chairman of the New South Wales Medical Directors of Psychiatry and from 1992 to 2002 I was frequently (alternate weekends on one night per week) consultant and also registrar on-call for the Illawarra Health Service.

I understand that the above could confuse the layman but there was never any intention (or reason) on my part to mislead anyone, nor was any treatment compromised.

<u>Section 5</u>

As before I deny the complaint made by patient B and previously understood the HCCC was not proceeding with this complaint (1993).

I strongly deny that my long relationship with patient B was personally inappropriate. I can see that between 1998 and 2002 I consulted patient B on a weekly basis with the support of other staff and colleagues. A diagnosis of dissociative disorder was complex. I consulted an expert in the disorder who personally recommended that such a disorder required at least four to six hours of therapy a week. This was impractical in a public health situation but I considered close support was vital for her well being. Over involvement could be a complaint but her frequent admissions of a suicidal nature and isolated behaviour required such support. I was encouraged in this by my colleagues and senior staff and in fact at times it did require visits to her home often when she was suicidal and required to be brought to hospital.

I believe the maintenance and support of this ex-community nurse in the community required such a support. Also I believe at time when I was absent on leave continued contact by postcard and small gifts was justified to maintain stability. My departure from the Illawarra Health Service in 2002 caused such distress and therapeutic difficulties for patient B but again a small gift of remembrance at my parting was justified. Talking to other colleagues they assured me that similar gifts to clients especially with such involvement was not uncommon. Following my departure there was constant contact support for six months by use of postcards and several telephone calls. I was also encouraged by her moves to further training and eventual hope to return to work that I gave a small financial gift to help her finance this cause especially as her income was low.

I can see in retrospect that from an outsider unfamiliar with this case I may have acted with unusual involvement and encouraged her dependency. At the time I felt it was vital for her continued well being and progress. I emphasise that I was supported by my colleagues in this action and frequently discussed it with them."

27. On 25 April 2005 the practitioner wrote a letter to the New South Wales Medical Board in the following terms:

"I am writing to you in urgency. It has just been passed to me the letter from HCC (sic) regarding the above Tribunal and the fact that a decision may well be handed down on 26th April 2005 which in fact is only in two days time. I read through the documents they supplied to me and I am seriously concerned about some of the information stated before the Tribunal on their part and I consider much of it as travesty and exaggeration. I am therefore concerned enough to wish that I could have a right to reply to it before a decision is made by the Tribunal. I realise that this is probably too late but would value that opportunity if at all possible. My own sentiments still are those stated in what I believe is now Exhibit B to this Tribunal, so I would be grateful if these sentiments could be passed onto the Tribunal before any major decision is made and value your support in this matter.

Secondly I am also concerned that the Health Care Complaints Commission have indicated that they are planning to ask for expenses of up to $36,000 with this particular matter and I feel very strongly against this as the previous Tribunal was represented by my Medical Defence Organisation and obviously they would have continued carrying any financial responsibility. I must admit that it was not my fault that Justice Urquhart became ill and the case was postpone or stopped. I would value if these points can be made as I feel that I shouldn't be responsible for the change in the Hearing which in fact has nothing to do with me. I realise that this is perhaps a little difficult to put but I would value your help, advice and support in this matter.

My address is the x, *Dorset. However, I am often away from there so sometimes communication does take a while to reach me. Once again thank you for your help".*

28. The practitioner was advised in a letter addressed to him at his United Kingdom address sent by Airmail Express on 3 May 2005 that the Tribunal would consider his response to the Commission's submissions provided the response was received by the Tribunal by way of facsimile no later than Thursday 12 May 2005.

29. The practitioner on 12 March 2005 wrote to the Tribunal and requested that the time for his response to the Commission's submissions be

extended to 20 May 2005. The Tribunal agreed to the practitioner's request.

30. The practitioner by way of letter dated 19 May 2005 responded to the Commission's submissions. Relevant sections of the practitioner's response are as follows:

(1) That the practitioner did not attend the Tribunal hearing on the recommendation of his "Medical Defence" insurer;

(2) That at no time did the practitioner wish to put patient A or patient B through a Tribunal hearing with cross examination and that he agreed to remove his name from the Register of Medical Practitioners on the advice of the "Medical Defence Union";

(3) That the practitioner became involved in a sexual relationship with patient A in September 1997 which was "brief and inappropriate due to circumstance and was not a prolonged and maintained sexual contact between the doctor and the patient";

(4) That the practitioner at times found patient A's "presentation to me was not vulnerable or disturbed and no evidence in Section D to see that this patient has been seriously harmed by any action or any involvement in my part";

(5) As to particular 3 regarding the practitioner using the title psychiatrist and holding himself out to be a psychiatrist, the practitioner indicated that he had worked in psychiatry since 1975. The practitioner further indicated "I do not feel that my judgment about psychiatric matters was particularly lacking";

(6) As to particular 5 regarding patient B, the practitioner indicated that the relationship "was an inappropriate personal relationship." Further the practitioner accepted that he "may have encouraged a degree of dependence but at the time because of her illness I felt it was valuable and that she required such help in order to maintain her independence";

(6) As to the costs of the Tribunal hearing the practitioner advised that the costs of the original Tribunal hearing of 17 March 2003 were borne by United Medical Protection Limited and that the costs of the subsequent hearing before this Tribunal are "not within my domain".

Findings as to Particulars 1 and 2 of the Complaint

31. From the time the Commission first informed the practitioner of the complaint, the practitioner lied to the Commission when he denied having had any sexual relationship with patient A (Volume 6, Tabs 25,26,32, Exhibit C). The practitioner's original denial of wrongdoing stands in stark contrast with his later admissions of having a personal and sexual relationship with patient A.

32. On the other hand patient A’s account of the relationship is supported firstly by the contemporaneous notes made by her in her diaries from 1994 to 1998 (Volume 1, Tab 11, Exhibit C). Secondly, the transcripts of the thirteen audio-cassette tapes of conversation between patient A

and the practitioner (Volume 2, Tab 13.1 to Volume 3, Tab13.25, Exhibit C). Thirdly, the photographs taken by patient A of the practitioner which depict the practitioner naked on a bed with his penis in an erect state (Exhibit E). Fourthly, the schedule of 162 telephone calls made by the practitioner to patient A for the period 24 October 1997 to 12 June 1998 (Volume 2, Tab 12, Exhibit C).

33. The practitioner has not been consistent as to the period when sexual activity occurred with patient A. On 24 February 2003 the practitioner in writing admitted to the Tribunal that the sexual relationship between himself and patient A occurred during the period September to November 1997 (Volume 6, Tab 33, Exhibit C). The Tribunal finds it remarkable that in his letters to the Tribunal dated 7 March 2005 and 19 May 2005 that the practitioner informed the Tribunal that he may have only behaved inappropriately with patient A briefly in September 1997.

34. The Tribunal finds that patient A's account of her relationship with the practitioner is supported by independent evidence. The Tribunal finds that despite the fact that patient A has a history of significant psychiatric disability, where there is conflict between her version of events and the practitioner's versions of events that patient A's version is to be preferred. The Tribunal regards the practitioner as being an unreliable historian and finds that the practitioner lied to the

Commission and to the Tribunal about his sexual activities with patient A.

35. The Tribunal is comfortably satisfied on the balance of probabilities that between about January 1995 and June 1998 the practitioner engaged in a personal and sexual relationship with patient A (Particular 1 of the complaint). Further, the Tribunal is comfortably satisfied on the balance of probabilities that following the commencement of the sexual relationship, the practitioner continued to treat patient A (Particular 2 of the complaint).

Peer Reviews Regarding Particulars 1 and 2

36. Dr. Bruce Westmore, a forensic psychiatrist, in his report dated 16 April 2001 (Volume 6, Tab 48, Exhibit C) opined:

> *"In the event that it is established by a Tribunal of fact that Dr. Jones has seriously breached the doctor/patient relationship with A and that he had sexual contact with her, then his denials, the raising of her psychiatric condition as an explanation for her allegations, the fact that she may be exposed to the critical examination of a Tribunal hearing, would all attract my strongest disapproval".*

37. Dr. Jonathan Phillips, a consultant psychiatrist in his report dated 27 April 2001 (Volume 6, Tab 41, Exhibit C) opined:

> *"Finally, it should be understood that on the information available A suffered at various times from a chronic, severe and relatively treatment-refractory psychiatric illness. She was*

reliant on the goodwill, skill, advice and treatment of her medical advisors (including Dr. Jones) and was in a vulnerable position in the therapeutic situation. She was unlikely to resist the actions of Dr. Jones, a matter well understood by the doctor. In essence Dr. Jones set out in a conscious and reprehensible manner to abuse A for his passing sexual pleasures. The significance of this needs no further comment".

Findings as to Particular 3

38. The complainant tendered the medical records and reports which related to patient A from the Illawarra Health Service (Volume 4, Tab 6, Exhibit C). An analysis of the documentation contained within the medical records reveals that the practitioner signed a number of documents describing himself either as a community psychiatrist or as a psychiatrist. Those documents are:

(1) Confidential psychiatrist report dated 6 May 1996 signed by the practitioner as "Community Psychiatrist" (Volume 4, Tab 16, Page 167, Exhibit C);

(2) Confidential psychiatrist report dated 27 May 1996 signed by the practitioner as "Community Psychiatrist" (Volume 4, Tab 16, Page 168, Exhibit C);

(3) Confidential psychiatrist report dated 3 June 1996 signed by the practitioner as "Community Psychiatrist" (Volume 4, Tab 16, Page 169, Exhibit C);

(4) Letter of 7 November 1996 written by the practitioner to the Department of Housing in which the practitioner

describes himself as patient A's psychiatrist (Volume 4, Tab 16, page 194, Exhibit C).

39. Dr. Jonathan Phillips in his report of 27 April 2001 (Volume 6, Tab 42, Exhibit C) indicates the three factors required before a medical practitioner may hold himself out to be a psychiatrist, they being:

    (1) A successful completion of a post graduate programme in psychiatry;

    (2) A successful completion of a post graduate examination in psychiatry and to have been awarded a post graduate qualification in psychiatry, generally FRANZCP;

    (3) A recognition by the Health Insurance Commission that the practitioner is a consultant physician in psychiatry.

40. The practitioner in his Statement dated 21 February 1999 has admitted that he does not possess the qualifications of a psychiatrist (Volume 6, Tab 26, Exhibit C).

41. The Tribunal is comfortably satisfied on the balance of probabilities that in 1996 the practitioner used the title psychiatrist when he was not entitled to do so (Particular 3 of the complaint).

<u>Peer Review Regarding of Particular 3</u>

42. Dr. Bruce Westmore, a forensic psychiatrist, in his report dated 19 April 2001 (Volume 6, Tab 49, Exhibit C) opined:

"My views regarding Dr. Jones' use of the term psychiatrist when he is not a psychiatrist would attract my strongest disapproval. I believe that that view would be held by my peers.

I would strongly disapprove of Dr. Jones' behaviour, if he has been using the title of psychiatrist to refer to his professional skills, capacities and training when indeed he is not a psychiatrist nor obtained the necessary training to become a psychiatrist. I believe my peers would also attribute the strongest level of disapproval to such behaviour.

The fact that Dr. Jones was not a psychiatrist may well have impacted on his ability to provide a suitable standard of care for A, particularly when she appears to suffer from a severe psychiatric illness".

Findings as to Particular 4

43. Patient A in her Statement of 13 February 2001 (Volume 1, Tab 6, Exhibit C) deposed that the following conversation took place prior to the patient having sexual intercourse with the practitioner:

"He shouted at me 'Take your clothes off". I shouted at him 'No'. Then he said 'Do you know who I am?' His eyes were wide and looked very unfriendly, and his manner scared me. I said 'Yes. You are Dr Jones'. Dr Jones asked me again 'Do you know who I am?' I said 'You are a psychiatrist'. Dr. Jones said 'Do you know what psychiatrists do?' I said 'They treat people'. He said 'Yes. And they also lock up people in the hospital".

44. Further an analysis of patient A's diaries (Volume 1, Tab 11, Exhibit C) and the transcripts of the thirteen audio-cassette tapes of conversations between patient A and the practitioner (Volume 2, Tab 13.1 to Volume 3, Tab 13.25, Exhibit C) reveal that the practitioner held himself out to be a psychiatrist to patient A.

45. On the basis of the aforementioned evidence the Tribunal is comfortably satisfied on the balance of probabilities that between about January 1995 and about July 1998 the practitioner held himself out to patient A to be a psychiatrist when he was not qualified as a psychiatrist.

Peer Review Regarding of Particular 4

46. Dr. Westmore, psychiatrist, in his report dated 19 April 2001(Volume 6, Tab 49, page 2, Exhibit C) opined:

> *"Dr. Jones was describing himself as a psychiatrist when he was not, he was clearly misrepresenting himself in terms of his training and experience and his level of skill. This misrepresentation obviously is potentially deceitful in the sense that patients who are seeking a specialist opinion may believe they are actually receiving such from Dr. Jones when in fact they are not".*

Findings as to Particular 5

47. As far as this Particular is concerned the transcript of the previous Medical Tribunal held on 17 March 2003 indicates that a Statement of Agreed Facts relating to this particular was tendered as Exhibit G by the complainant with the consent of the practitioner (Volume 6, Tab 54, page 3, Exhibit C).

48. The Statement of Agreed Facts is in the following terms (Volume 5, Tab 19, Exhibit C);

"STATEMENT OF AGREED FACTS

This is a statement of agreed facts in relation to the complaint by Patient B against Dr. Roger Jones:

(1) At all relevant times the respondent worked as a Career Medical Officer in Psychiatry employed by the Illawarra Health Service.

(2) The respondent treated Patient B, born on x x 1965, from around December 1995 until around January 2002. During that period she had numerous admissions to hospitals in the Illawarra area and was variously diagnosed with borderline personality disorder, major depression, suicidal ideation, post- traumatic stress disorder, anorexia nervosa and dissociative identity disorder.

(3) During that period the respondent reviewed her from time to time in hospital and saw her for post-admission follow-up on a regular basis at the offices of the Northern Community Mental Health Team in Wollongong.

(4) Between January 1997 and 17 January 2002, the respondent saw Patient B at the Wollongong rooms 171 times.

(5) From about late 1998 until around mid 2002 the respondent failed to maintain professional boundaries with Patient B and acted inappropriately in that he sent her cards and letter which contained personal messages and information concerning his personal life, gave her gifts of a teddy bear, compact discs and a necklace and he sent her from overseas several gifts of money.

(6) He also visited her grandmother in X.

(7) The respondent last treated Patient B on 17 January 2002 shortly before he went overseas. He continued to communicate with Patient B by letter until around June 2002."

49. The practitioner in his document headed “Response to Complaint” of 7 March 2005 (Exhibit B) informed the Tribunal interalia:

> *“As before I deny the complaint made by Patient B and previously understood the HCCC was not proceeding with this complaint (1993).*
>
> *I strongly deny that my long relationship with patient B was personally inappropriate.”*

50. The practitioner in his letter to the Tribunal of 19 May 2005 wrote regarding the relationship with patient B in the following terms:

"I would agree that it was an inappropriate personal relationship".

51. The responses by the practitioner to Particular 5 once again demonstrate to the Tribunal that the practitioner is unreliable.

52. In light of the material contained in the Statement of Agreed Facts tendered at the Medical Tribunal hearing held on 17 March 2003 and the practitioner's letter of 19 May 2005, the Tribunal is comfortably satisfied on the balance of probabilities that between late December 1998 and mid-June 2002 the practitioner engaged in an inappropriate personal relationship with patient B (Particular 5 of the complaint).

ORDERS SOUGHT

53. The complainant seeks a finding that the practitioner has been guilty of unsatisfactory professional conduct and/or professional misconduct

within the meaning of s.36 and s.37 of the Act, in that the practitioner has:

(i) demonstrated a lack of adequate knowledge, skill, judgment or care in the practice of medicine and/or has been guilty of improper or unethical conduct relating to the practice of medicine.

Unsatisfactory Professional Conduct

54. S.36 of the Act sets out the matter which constitute unsatisfactory professional conduct, it relevantly includes:

> "other improper or unethical conduct relating to the practice or purported practice of medicine."

Professional Misconduct

55. S.37 of the Act sets out the meaning of "professional misconduct" as being:

> "Unsatisfactory professional conduct of a sufficiently serious nature to justify suspension of a practitioner from practising

medicine or the removal of the practitioner's name from the Register".

Requisite Standard of Proof

56. The Commission bears the onus of proving the truth of the particulars contained in the complaint to the Tribunal's comfortable satisfaction on the balance of probabilities (see ***Briginshaw v. Briginshaw (1938) 60 CLR 336 at 361 and 362, Rejfek v. McElroy (1965) 112 CLR 517 at 521 and Bannister v. Walton (1993) 30 NSWLR 699 at 711 and 712***.)

57. The Commission on the whole of the evidence is required to comfortably satisfy the Tribunal that one or more of the particulars have been established. Each particular must be considered separately by the Tribunal to determine whether a breach of s.36 and/or s.37 of the Act has been established by the Commission to the requisite standard of proof.

OBLIGATIONS OF MEDICAL PRACTITIONERS

58. In ***Richter v. Walton (unreported, Court of Appeal, 15.7.93)*** Priestly JA dealt with the obligations of medical practitioners in the following terms:

> *"The degree of trust which patients necessarily give to their doctors may vary according to the condition which takes the patient to the doctor. Even in regard to the most commonplace medical matters, the trust a patient places in a doctor is considerable. In some cases, of which the present seems to be an example, the patient's trust cannot help but be absolute. The doctor's power in regard to the patient in such cases is also very great. I do not mean power in the abstract way but as a matter of fact; the extent of the power will vary according to the temperament of the patient, but the doctor for some patients and for a limited period, because of the relationship in which they are temporarily placed, is in a position to do whatever the doctor wants with the body of the patient. This is one of the reasons why doctors are subject to correspondingly great obligations and are expected to maintain high standards; all this being very much in the public interest."*

FINDINGS OF THE TRIBUNAL

59. The Tribunal is particularly critical of the practitioner in respect of his dealings with Patient A. The Tribunal finds that the practitioner abused the position of trust which was reposed in him by virtue of the medical practitioner/patient relationship.

60. The practitioner must have known how vulnerable patient A was at the time he so callously commenced the sexual relationship with her for his own sexual gratification. Further, the practitioner must have known the degree of affection patient A held for him and that patient A was likely to be damaged by his illicit social and sexual dealings with her.

61. The Tribunal finds Particulars 1 to 5 proven to its comfortable satisfaction on the balance of probabilities. The Tribunal finds that the

conduct of the practitioner in respect of such particulars amounts to unsatisfactory professional conduct.

62. The Tribunal gives credit to the practitioner for his admissions regarding his sexual conduct with patient A and for not requiring either patient A or patient B to give evidence before the Tribunal. The Tribunal further gives credit to the practitioner for removing his name from the Register of Medical Practitioners.

63. However, the Tribunal finds that the unsatisfactory professional conduct of the practitioner is of a sufficiently serious nature to justify suspension of the practitioner from practising medicine or the removal of the practitioner's name from the Register.

64. The Tribunal therefore finds that the conduct of the practitioner amounts to professional misconduct within the meaning of s.37 of the Act.

65. The Tribunal notes that the practitioner's name was removed from the Register of Medical Practitioners by the Medical Board pursuant to s.27 of the Act with effect from 14 March 2003 following the practitioner requesting the removal of his name from the Register.

66. The Tribunal finds that an appropriate order in the circumstances of this case is that pursuant to s.64(2) of the Act, that the practitioner not

be re-registered. In making this order the Tribunal has taken into account in the exercise of its protective jurisdiction:

(1) The protection of the community;

(2) The maintenance of the standards of the Medical Profession;

(3) The maintenance of public confidence in the profession.

67. The Tribunal further orders that pursuant to s.64(3) of the Act that the practitioner not be permitted to make an application for registration until the expiration of five years from today.

68. Costs are reserved.

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Deputy Chairperson Judge R.H. Solomon

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Dr. M. Diamond

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Dr. L. Edwards

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Ms. J. Houen