

Medical Tribunal of New South Wales

In the Matter of Dr. GJ and the Medical Practice Act 1992 as amended

Deputy Chairperson: His Honour Judge W.H.Knight

Members :- Dr S Messner

Dr K Edwards

Mrs J Ellard

REASONS FOR DETERMINATION AND ORDERS

Pursuant to section 51 (1) of the Medical Practice 1992 as amended the Health Care Complaints Commission has complained that Dr GJ being a medical practitioner registered under such act: has been guilty of professional misconduct within the meaning section 37 of the Act in that he:-

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

Particulars of such complaint were supplied as follows-

- (1) At all relevant times, the practitioner was a general practitioner practising at XXXXXX NSW.
 - (2) The practitioner commenced treating a patient, Patient A on a regular basis from in or about 1989 until about July, 1 93.
 - (3) The practitioner inappropriately engaged in and maintained a personal and sexual relationship with A which commenced 1 May, 1993 and continued until about September, 1993.
 - (a) The practitioner inappropriately kissed and hugged Patient A on the following occasions:
 - (1) On or about 1 May 1993 during the course of a medical consultation at the practitioner's surgery;
 - (2) In the course of the consultation a week after the consultation referred to in paragraph 3(a)(1) at the practitioner's surgery;
 - (3) Between 12 May 1993 and 30 May 1993 at the practitioner's surgery;
 - (4) In or about early September 1993.
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- (b) The practitioner inappropriately engaged in sexual contact with Patient A on the following occasions:
- (1) On or about 12 May 1993 at the practitioner's home;
 - (2) On or about 30 May 1993 at the practitioner's home;
 - (3) On or about a Sunday afternoon in June 1993 when the practitioner attended Patient A's home for the purpose of treating Patient A's son;
 - (4) On or about 25 July 1993 at the practitioner's home.
- (c) The practitioner inappropriately cuddled Patient A on or about 25 July 1993 at his surgery.
- (d) The practitioner inappropriately touched Patient A's groin in the course of a medical consultation on or about 1 May 1993.

Dr GJ has admitted the complaint and the particulars of the complaint although he disputed some of the contents of the statement of Patient A made on 12 February 1996 (see Exhibits B2 and 1). As the contents which were disputed do not affect the substance or gravity of the complaint the Health Care Complaints Commission accepted Dr GJ's denial of those matters so as to avoid the necessity of calling Patient A to give oral evidence.

Having regard to the admissions made by Dr GJ, the Tribunal, applying the principles set forth in *Rejfek v. McElroy* (1965) 112 CLR 517 at 521 and *Briginshaw v. Briginshaw* (1938) 60 CLR 336 especially at 361-2, is reasonably satisfied on the balance of probabilities that both the complaint itself and the whole of the allegations as particularised have been established.

There is in these circumstances therefore no need to recount in detail all of the actions of the respondent but the Tribunal considers that, for the benefit of any subsequent Tribunal which may have to consider an application by Dr GJ for restoration to the register, it should set out in general the facts which underlie the complaint.

Accordingly the Tribunal sets out the following facts of which it is reasonably satisfied on the balance of probabilities.

The respondent, who was at all material times a registered medical practitioner, commenced treating Patient A on a regular basis in or about 1989. Patient A was a married woman who was then 26 years of age whilst the respondent was then aged 46 and had been in practice since 1973. Over the succeeding years Patient A saw the respondent frequently on a proper medical basis. However by 24 April 1993 Patient A believed that she was becoming too emotionally attached to the respondent and on that day asked him to refer her to another medical practitioner. The respondent agreed to supply her with a list of names of other medical practitioners.

On 1 May 1993 he gave her such a list at his surgery. He then kissed her on the lips and she hugged him. He felt her groin and thighs and she reciprocated. The following week she consulted the respondent about a sore throat and there was more hugging and kissing. At the suggestion of Patient A the respondent met her at

his home on 12 May 1993 where they kissed. Patient A then took off her blouse undid the respondent's shirt and had oral sex with him. The respondent also felt Patient A's genitals.

Subsequently Patient A continued to consult the respondent at his surgery and they would kiss and cuddle and he would fondle her breasts. On 30 May 1993 Patient A went to the respondent's home at his invitation. Both of them undressed and oral sex was performed between them. In June 1993 Patient A had oral sex with the respondent at her home. The relationship between them continued and in July 1993 Patient A and the respondent cuddled at his surgery. On 25 July 1993 Patient A visited the respondent at his home. Both parties undressed and there was a consensual attempt by the respondent to have vaginal intercourse with Patient A but he was unsuccessful. The parties continued their relationship which involved kissing and cuddling up to September 1993 when at the respondent's suggestion Patient A saw a psychologist and the improper conduct ceased.

There can be no doubt that the actions of the respondent medical practitioner were grossly improper and constituted professional misconduct within the meaning of section 37 of the Medical Practice Act. Furthermore having regard to the protection of the community, the maintenance of the standards of the medical profession and the maintenance of public confidence in the profession, it is quite clear that the respondent's name should be removed from the Register. Indeed both those matters were conceded by counsel for the respondent.

The two principal matters which were the subject of submissions at the hearing were - first, whether the Tribunal should make provision pursuant to section 64(3) of the Act that an application for review of its order not be made until after a specified time and if so, what should be the time so specified, and, secondly, whether the Deputy Chairperson should direct that the name and address of the registered medical practitioner in addition to that of Patient A should not be published.

As to the first of those matters the Tribunal considers that it should make provision for an application for review of its order not to be made until after a specified time. Counsel for the respondent submitted that a period of under two years would be appropriate which counsel for the Commission did not oppose. The Tribunal accepts such submission.

The Tribunal considers that a period of 18 months is the appropriate time during which the medical practitioner should not be entitled to make an application for review of the order removing his name from the register.

In coming to that decision the Tribunal has given careful attention to the fact that Dr GJ has long had conditions placed on his registration resulting from his drug abuse and need for psychiatric assistance. The history of such matter is as follows:- following an inquiry into his drug abuse held on the 9 March 1993 pursuant to section 19 of the Medical Practitioners Act 1938 as amended the committee conducting the inquiry agreed that Dr GJ 's name should be restored to the register on his giving certain undertakings. Those undertakings included formally surrendering his Schedule 8 authority under the Poisons Act, providing urinalysis in line with the protocol of the NSW Medical Board, regularly attending a psychiatrist or a clinician

experienced in the field of drug and alcohol approved by the Board, and attending a Board appointed psychiatrist for an assessment as soon as an appointment could be arranged and being reviewed by such psychiatrist at six monthly intervals.

Subsequently two complaints were made against Dr GJ. First that he suffered from an impairment within the meaning of the Medical Practice Act and secondly that he had been guilty of unsatisfactory professional conduct within the meaning of section 36 of such Act. Such complaints were the subject of an inquiry by a professional standards committee on 29 August 1994. The committee found each complaint proved but also was satisfied that at that time Dr GJ 's impairment was not likely to effect his capacity to practise medicine and recommended that certain conditions be placed on his registration. Those conditions included that he remain without authority under Schedule 8 of the Poisons Act, that he undergo urinalysis in accordance with a specified protocol, that he regularly attend his psychiatrist, and that he continue to attend the Board appointed psychiatrist for assessment at regular six monthly intervals. Similar conditions have continued to be placed on Dr GJ 's registration up to the present time.

The Tribunal accepts the opinion of Dr Stephen Jurd, consultant psychiatrist, who has been treating Dr GJ on a regular basis for some years as to Dr GJ's current state of health.

Dr Jurd's views as contained in his letter of 29 April 1998, which is part of Exhibit 2 are as follows:

"Dr GJ's problems are those of a man whose proclivity for drug dependence arises out of his tendencies to depression, anxiety and avoidant behaviour. Despite a five and half year psychiatric relationship, he still is at times anxious during consultations, but is less avoidant of the many tasks like those he let slip up to 1994."

He has made substantial progress, both as a patient and a doctor during treatment. This has been further consolidated since July 1996.

Subsequently, in his report of 18 May 1998, also part of exhibit 2 Dr Jurd said:-

"From October 1995 I have been prescribing sertraline (Zoloft) for Dr GJ. At that time there were prominent signs and symptoms of major depression. He seems to have made a good response and is less disabled by anxiety and depression, despite his current situation.

Depression is commonly comorbid with drug dependence. Mostly it remits with time and abstinence. Dr GJ appears to be in that minority who have depression that persists into recovery and who require ongoing pharmacological management to manage that depression."

It seems to the Tribunal that Dr GJ's depression and anxiety coupled with his drug abuse substantially contributed to his actions which are the subject of the current complaints.

Having regard to Dr Jurd's opinion, the Tribunal considers that there is some prospect for Dr GJ to have sufficiently overcome his depression and anxiety after 18 months for him to be a suitable applicant for re-registration. Of course his progress with his depression, anxiety and drug dependence will need to be considered in relation to any future application for reregistration as well as whether his character is sufficiently rehabilitated .

Turning to the second matter, namely the question of non publication, in the Deputy Chairperson's view (with which the other members of the Tribunal agree) there can be no doubt that, in general, it is highly desirable for the name of a medical practitioner who has engaged in professional misconduct, particularly of a sexual nature and who has consequently been de-registered to be published. Such publication enables the community to be assured that conduct of that nature will simply not be tolerated in a registered medical practitioner. It also assists in the maintenance of the standards of the medical profession and the maintenance of public confidence in that profession and as a warning to other practitioners who might be tempted to engage in similar conduct.

However, the Deputy Chairperson and the other members of the Tribunal consider this to be a special case. Such conclusion was reached for two reasons. First, because the medical practitioner was impaired at the time this professional misconduct took place and this impairment substantially contributed to his actions. Second, and most importantly, the medical practitioner has at all times freely conceded that the conduct, the subject of the complaint, took place and that the nature of that conduct constituted professional misconduct. In the view of all the members of the Tribunal it is of great benefit to the public where complaints of this nature are made, which are true, that the medical practitioner concerned admits them at the earliest reasonable opportunity. The benefit from that course is twofold. It enables prompt action to be taken at far less cost to the public purse and second it spares the former patient from the trauma of having to go into a witness box and be cross examined about personal sexual matters. The Tribunal members consider that preventing publication of Dr GJ 's name because he admitted the sexual conduct and conceded that such conduct amounted to professional misconduct may well act as an inducement to other medical practitioners against whom true complaints of a similar nature may be made to take the same course. The Deputy Chairperson and the other members of the Tribunal would wish to encourage such admissions and concessions which they consider to be very much in the public interest.

Furthermore, the protection of the community, the maintenance of the standards of the medical profession and the maintenance of public confidence in the profession, can be achieved by the publication of the fact that a medical practitioner who engaged in sexual activity with a patient has had his name removed from the register for professional misconduct without the necessity of the disclosure of the practitioner's name and address. It is for those reasons that the Deputy Chairperson with the concurrence of the other members of the Tribunal considers this to be an appropriate case to direct that the name and address of the registered medical practitioner not be published.

Finally the medical practitioner through his counsel has sought an order that any orders made by the Tribunal not take effect for 14 days, so as to enable the medical

practitioner to wind up the affairs of his practice. Such a course was not opposed by the Health Care Complaints Commission and in the view of the Tribunal is proper to be made in all the circumstances.

Accordingly the Tribunal makes these orders:-

1. That the name of GJ be removed from Register of Medical Practitioners.
2. That, pursuant to section 64(3) of the Medical Practice Act 1992 as amended, an application for review of this order may not be made until after 18 months from the date of which it comes into effect, that is 18 months from 3 June 1998 which is 3 December 1999.

In fixing such period the Tribunal wishes to make it quite plain that it is not expressing the opinion that after the expiration of 18 months Dr GJ will be able to establish that he is entitled to re-registration. That is a matter for any future Tribunal to determine. However, this Tribunal does wish to indicate that it considers that such 18 month period is the minimum period which would need to expire before the respondent could possibly be able to demonstrate that he has become a suitable person for re-registration.

3. That pursuant to section 155 of the Medical Practice Act 1992 as amended these orders take effect on and from 3 June 1998

In addition the Deputy Chairperson presiding on this inquiry, with the agreement of the other members of the Tribunal, directs that the name and address of Patient A and the name and address of the medical practitioner respondent not be published. Such direction is given pursuant to Clause 6 of Schedule 2 of the Medical Practice Act 1992 as amended.

Dated :-19 May 1998


Judge W.H. Knight.
Deputy Chairperson

Dr. S. Messner.
Member

Dr. L. Edwards.
Member

Mrs. J. Ellard.
Member