

IN THE DISTRICT COURT OF
NEW SOUTH WALES

MEDICAL TRIBUNAL

Deputy Chairperson: Judge Freeman DCJ

Tribunal Members: Dr P Arnold
Dr P Tucker
Ms A Collier

No: 40017/97

Date: 19th February, 1998

**DR JOHN MURRAY UEBEL AND THE MEDICAL PRACTICE ACT OF
NEW SOUTH WALES**

**THE TRIBUNAL ORDERS THAT THE NAMES OF THE PATIENTS OR ANY
MATTER CAP ABLE OF IDENTIFYING THE PATIENTS BE NOT
PUBLISHED**

REASONS FOR DETERMINATION

The Tribunal is charged with determining a complaint that the Respondent (Dr John Uebel) has been guilty of professional misconduct within the meaning of Sections 36 and 37 of the Act (The Medical Practice Act 1992) in that he has demonstrated a lack of adequate judgement or care in the practice of medicine and/or engaged in improper or unethical conduct related to the practice of medicine.

The particulars provided are reproduced:

Complaint One

In 1988 the practitioner commenced to treat a female patient, Ms B, and at all relevant times was her treating practitioner. Ms B had, during her consultations with the practitioner, disclosed difficulties in her marriage.

- 1. On the 18 October 1990, during the course of a consultation with Ms B, the practitioner:*

- i) inappropriately massaged Ms B 's breast*
 - ii) kissed Ms B*
 - iii) when Ms B asked the practitioner to stop, the practitioner continued to kiss Ms Band placed her hand on his penis.*
- 2. The practitioner telephoned Ms B at her home on 19 October 1990, and the following week had sexual intercourse with Ms B at her home.*
 - 3. The practitioner had sexual intercourse with Ms B each week thereafter until about December 1990, and on several occasions in 1991 and 1992, the last occasion being in or around October 1992. On some of these occasions, the practitioner had sex with Ms B during the course of medical consultations with Ms B at the practitioner's surgery.*
 - 4. In 1994, Ms B consulted the practitioner for referral for her son. As she was leaving his surgery, the practitioner inappropriately grabbed Ms B around the waist and kissed her.*

Complaint Two

In 1994 the practitioner commenced to treat a female patient, Ms J, and at all relevant times was Ms J's treating practitioner.

- 1. In August 1995, during the course of medical consultation with Ms J at the practitioner's surgery, the practitioner had sexual intercourse with Ms J.*
- 2. The practitioner had sexual intercourse with Ms J in August 1995:*
 - i) after Ms J had disclosed to the practitioner her recent relationship break-up*
 - ii) knowing that one of Ms J's sons was in the surgery waiting room.*
- 3. In September 1995, during the course of a medical consultation with Ms J at the practitioner's surgery, the practitioner had sexual intercourse with Ms J.*
- 4. The practitioner had sexual intercourse with Ms J in September 1995 knowing that one of Ms J's sons was waiting for her.*

In a letter to the Health Care Complaints Commission dated 26th November 1997, the Respondent admitted most of the foregoing particulars. These admissions were confirmed at a hearing on the 9th February 1998 by Mr Bozic of Counsel who appeared for the Respondent. The only matters in respect of which the Respondent did not make admissions were in relation to particular 1 (i) and relation to particular 3 in complaint one is so far as it alleged that some of the sex acts took place with Ms B during the course of medical consultations with her at the practitioner's surgery. All of the particulars of the complaint no.2 involving Ms J were admitted.

The Tribunal has before it the statutory declaration of Ms B who was not required for cross examination. The Respondent neither gave evidence nor attended the hearing by the Tribunal. There is accordingly no material controverting Ms B' s sworn version of events either directly or by way of cross examination. Mr Bozic indicated that his instructions were not to put before the Tribunal any material which could cast any doubt on the credit Ms B. Accordingly, bearing in mind the standard of proof required by the Tribunal, as enunciated in *Briginshaw v Briginshaw*, the Tribunal expresses itself to be reasonably satisfied as to the whole of the allegations as particularised.

There is no need, in these circumstances, to recount in detail all of the actions of the Respondent.

It is necessary, however, to record the Tribunal's acceptance of the submissions made on behalf of the complainant to the effect that the professional misconduct of the Respondent (as proved) was very grave having regard to a number of aggravating features.

These features included the fact that the Respondent breached the trust of his two patients at a time when each was extremely vulnerable. Ms B had consulted the Respondent about sexual difficulties being experienced by her husband. Ms J had revealed to the Respondent that she was suffering from the emotional effects of a breakdown in her previous relationship. Each was entitled to professional support from the Respondent but instead he took advantage of each of them.

In addition sexual intercourse took place at the Respondent's surgery whilst the patients' sons or one of them was present in the waiting room. The effect on each patient has been devastating. Ms J has been diagnosed by Dr Caroline Quadrio as suffering from an Adjustment Disorder with depression and anxiety in consequence of her experience at the hands of the Respondent whilst Ms B has been under treatment likewise for depression similarly caused. Ms B was so distressed by the actions of the Respondent that she declined to consult him in relation to her son who was suffering from appendicitis. There was, accordingly, a delay in diagnosis and in the subsequent necessary operation. The health of the patient's son was accordingly placed in jeopardy as an indirect result of the Respondent's actions.

In addition Ms J had claimed on Medicare consultations at which sexual intercourse took place. This represents a breach by the Respondent of his obligations to the health system generally.

The Respondent in his letter of 28th November 1997 and in the submissions of his counsel conceded that he had been guilty of professional misconduct and that, in the

circumstances, the only appropriate order would be an order that his name be removed from the register.

Indeed, the Respondent had his own name removed from the register on 23rd December 1997. Nonetheless an order for deregistration has the effect under Section 64(2) that he not be re-registered. The Respondent's action in having his own name removed does not in any way effect the powers of this Tribunal.

Ms Kiel for the complainant submitted that as well as being deregistered the Respondent should also be fined. The Tribunal has the power to impose a fine of up to 250 penalty units under Section 62(1) of the Act. This submission was directed, according to Ms Kiel, to establishing the proposition that the Respondent's act in having his name removed from the register should be shown to be ineffective as in any way inhibiting the Tribunal's powers.

Having considered the matter, the Tribunal does not believe the imposition of a fine is appropriate in this case. The Tribunal's jurisdiction requires that it have regard to the following matters:-

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

The concern of the Tribunal is not to punish the wrong doing of erring practitioners.

The purposes of the Tribunal are adequately and appropriately served, in the circumstances of this case, by the order of deregistration.

Order

The Tribunal orders that the name of John Uebel be removed (and remain removed) from the Register.

An order may also provide, under Section 64(3), that an application for review for this order may not be made until after a specified time. Ms Kiel for the complainant argued that a term of five years should be specified in this connection whilst Mr Bozic for the Respondent submitted that it should be somewhat less. It is by no means clear to this Tribunal that any particular period of time will be sufficient for the Respondent to fundamentally reappraise his standards and to be seen to have eschewed his past misconduct.

Both counsel, at the request of the Tribunal, provided some statistical evidence covering cases in which the Tribunal, differently constituted, has dealt with the misconduct of sexual impropriety with patients.

In the light of that material the Tribunal has determined that an application for review of the order under Division 3 of Part 6 may not be made until after a minimum period of 3 years.

This is not to say, of course, that any future Tribunal will regard the expiration of that term as evidence that the Respondent has established entitlement to re-registration. It will still be a matter for that Tribunal to determine whether the Respondent has been able to demonstrate that he has become a suitable person for registration.

At that time, and of course without binding any such Tribunal, it appears clear that attention will need to focus not only on the conduct and professional standards of the Respondent but also on his own health. The Respondent has revealed in his letter of 1997 that he had an addiction to pethidine. He has been under treatment for this narcotic addiction and for major depression. Both of these problems will need to be addressed in any future application for re-registration.

Costs

The Tribunal orders the Respondent pay the complainant's costs of these proceedings.
