

1.

IN THE MEDICAL TRIBUNAL  
OF NEW SOUTH WALES  
AT SYDNEY



Deputy Chairperson: Judge W.H. Knight

Members: Dr. S. Messner  
Dr. L. Edwards  
Mrs. J. Ellard

**DR MAXWELL THOMAS**

### **REASONS FOR DETERMINATION**

Pursuant to section 51 (1) of the Medical Practice Act 1992 as amended, the Health Care Complaints Commission has complained that Dr. Maxwell Thomas being a medical practitioner registered under the Act has been guilty of professional misconduct within the meaning of sections 36 and 37 of the Act in that he has demonstrated a lack of adequate judgment or care in the practice of medicine and/or has engaged in improper or unethical conduct related to the practice of medicine.

The particulars of the such complaint are as follows:-

#### *"Complaint 1.*

*In August 1993 Mr. M consulted the practitioner for assessment for sexually transmitted disease. The practitioner requested that Mr. M provide a semen sample. The practitioner inappropriately remained in the consultation room and observed Mr. M as he masturbated and ejaculated into a specimen container.*

#### *Complaint 2.*

*1. In August 1995 Mr G consulted the practitioner for advice as regards the transmission of the Human Immuno-deficiency virus during oral sex. During the course of the consultation: the medical practitioner:*

- (a) performed an inappropriate genital examination on Mr G;*
- (b) while performing the genital examination inappropriately stated to Mr G, "Like a lot of gay men, you have a big penis: 11 or words to this effect;*
- (C) performed an inappropriate anal examination on Mr G;*
- (d) When performing the anal examination inappropriately stated to Mr G: "This is the point that men will want to touch if you have sex with them"" or words to this effect;*

2. *Following the genital and anal examination of Mr G, the Practitioner:*

- (a) *Inappropriately stated to Mr G, "I think you are biologically gay," or words to this effect;*
- (b) *Inappropriately telephoned and spoke to a person who advertised in a gay and lesbian newspaper Mr G had brought with him to the consultation. "*

During the course of the hearing it was pointed out to the senior counsel appearing for the complainant and Dr. Thomas that the complaint alleged that the medical practitioner had been guilty of professional misconduct and did not allege in the alternative that he had been guilty of unsatisfactory professional conduct.

The Tribunal drew to both counsel's attention that on one view of the facts the Tribunal might find that Dr. Thomas had been guilty of unsatisfactory professional conduct but not be satisfied that such conduct amounted to professional misconduct. The Tribunal suggested that in order to avoid any difficulty in relation to such a finding, an additional complaint be taken to have referred to it pursuant to clause 5 of Schedule 2 of the Medical Practice Act 1992.

Such additional complaint was that Dr Maxwell Thomas, being a medical practitioner registered under the Act had been guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act in that he had demonstrated a lack of adequate judgment or care in the practice of medicine or had engaged in improper or unethical conduct related to the practice of medicine with the particulars of such complaint being identical to those raised in the existing complaint.

Both counsel consented to such course and each expressly conceded that his client would not wish to adduce any additional evidence in relation to such additional complaint and would not require an adjournment were such complaint to be so added. Accordingly pursuant to clause 5 of Schedule 2 to the Medical Practice Act the Tribunal regards such additional complaint as having been referred to it and proposes to deal with it in these reasons.

#### Onus and Standard of Proof.

In determining whether the complaints before it have been established, the Tribunal has approached the matter on the basis that the complainant bears the onus of proving the complaint and further that the standard of proof to be applied is comfortable satisfaction on the balance of probabilities (see *Briginshaw v Briginshaw* (1938) 60 CLR 336, *Rejtek v McElroy* (1965) 112 CLR 517 and *Bannister v Walton* (1993) 30 NSWLR 695, and *Health Care Complaints Commission v Litchfield* (1997) 41 NSWLR 630 at 635).

### General Background.

Dr. Maxwell Sydney Thomas was born on the 17 March 1933 and thus is now 65 years of age. He graduated with the degrees of Bachelor of Medicine and Bachelor of Surgery from the University of Sydney in 1958 and became a Fellow of the Royal Australian College of General Practitioners in 1980. He has been married for thirty four years and is the father of two adult sons. He has been practising medicine continuously since 1959 and has conducted a general practice in the central business district of Sydney from 1988 to the present. He is a senior examiner with the Royal Australian College of General Practitioners and is a licensed prescriber under section 100 in relation to HIV. Over the last ten years he has developed an interest in sexually transmitted diseases and works in the gay and lesbian community.

### Complaint 1.

Mr. M consulted Dr. Thomas concerning a herpes infection on 30 September 1992. Thereafter he saw Dr. Thomas on various occasions and on 1 September 1993 gave a sperm sample to Dr. Thomas which was the subject of a pathological examination by Macquarie Pathology Services Pty Ltd. Such examination showed a positive result for a herpes simplex virus 2 infection. Mr. M. complained on 26 December 1994 to the Health Care Complaints Commission. In such complaint he alleged that the sperm sample had been taken in the presence of Dr. Thomas. He repeated such allegation in a statutory declaration sworn on 29 March 1995.

In his statement of 2 February 1998 to which he adhered in his oral evidence before the Tribunal, Mr. M said as regards the collection of the semen sample, "I recall that Dr. Thomas said to me, 'I want a sample of semen for testing' or words to that effect. He then left the examination room and came back with a clear plastic container with a yellow top. At the time I had my shirt off. I was on the examination table, lying down with my trousers and underpants pulled down. Dr Thomas gave me the container, requested that I masturbate into it. I masturbated with my left hand while holding the container with my right. I ejaculated into the jar that I had been provided with. At the time I commenced masturbating and until I had produced a sample, Dr. Thomas stood on my right hand side at about the level of my shoulder or chest. I cannot recall Dr. Thomas saying anything although I know he was facing me. Dr. Thomas then took the jar into another room, and I presume he placed the label on it. He seemed to be away for some period of time. When he came back he provided me with a tissue with which I wiped myself. He did not say anything to me at this time. I pulled my trousers and underpants back up and got off the examination table."

The reason for Mr. M's original complaint was that he had a concern that his sperm may have been used for artificial insemination purposes. Initially in October of 1994 whilst Dr. Thomas was on holiday Mr. M telephoned his rooms inquiring as to whether his semen had been used for such purposes.

He apparently became abusive when informed that Dr. Thomas was not available. Subsequently, he wrote to Dr. Thomas by letter dated 7 October 1994 requesting the name of the laboratory that had analysed his sperm sample and made several telephone calls to Dr. Thomas' rooms abusing the staff and refusing to leave a telephone number so that Dr. Thomas could return the call. Ultimately one of these telephone calls was put through to Dr. Thomas. He pointed out to Mr. M that his semen was not collected in a manner which would allow in vitro fertilisation and that in any event it would have been rejected as it was infected with herpes. Dr. Thomas formed the view that Mr. M was deeply disturbed and when he became offensive and was not making sense Dr. Thomas hung up.

When Mr. M gave evidence before the Tribunal he asserted for the first time that he had masturbated in the presence of Dr. Thomas on a further one or two occasions in the next couple of months following the occasion when his semen was taken and tested. He asserted that this masturbation was not for the purposes of any testing and conceded that he had not previously told any person about this. He has been residing in New Zealand since February 1998 and has consulted a doctor there for a mental disorder which has apparently been diagnosed as bi - polar disorder.

Dr. Thomas, in his evidence, whilst freely conceding that a semen sample had been obtained from Mr. M and tested by Macquarie Pathology Services Pty. Ltd, strongly denied that he had been present when the patient had masturbated in order to provide such semen sample and further denied that he had ever been present when Mr. M or indeed any other patient had masturbated.

There was very strong evidence in relation to Dr. Thomas' good character from two patients and from other medical practitioners as well as supportive evidence from his wife of thirty four years. Whilst it is clear that Dr. Thomas advertised in the gay press for commercial reasons and once or twice a year picked up a copy of a gay newspaper, the Tribunal is satisfied that he is not a homosexual and has no homosexual or bisexual tendencies. In coming to that conclusion the Tribunal has borne in mind that matters of sexual preference are often hidden but in this case' the evidence placed before the Tribunal was substantially one way. Mr. M was unimpressive in giving his evidence and having regard to the additional complaints which he had not mentioned prior to going into the witness box, his history of mental disorder and the firm denial by the medical practitioner who was of previously unimpeached character and who had been in practice for over forty years, the Tribunal is not comfortably satisfied on the balance of probabilities that Dr. Thomas was present when Mr. M masturbated for the purpose of providing a semen sample. Further it is not satisfied that Dr Thomas was ever present at any stage when Mr. M masturbated. Accordingly in so far as the complaint made against Dr. Thomas is based on particulars concerning Mr. M, the Tribunal dismisses it.

## Complaint 2.

Mr. G alleges that on the 22 August 1995 he consulted Dr. Thomas at his surgery in York Street Sydney. He did so because he had decided that he was a homosexual and had some concerns regarding safe sex especially having regard to his habit of biting the inside of his mouth. Mr. G had received some telephone counselling from a gay and lesbian counselling service. Such service had sent him a copy of an advertisement which Dr. Thomas had placed in the Sydney Star Observer, a newspaper circulating in the gay and lesbian community. It was this advertisement which led Mr.G to choose to consult Dr. Thomas.

Mr. G alleged that when he consulted Dr. Thomas he said to the doctor, "I have just come out. I have been with a girl for nine years. I have never had sex with a man and I am unsure if I'm gay," or words to that effect. Dr. Thomas stated that he was married and was not gay himself. Mr. G had had a habit of biting the inside of his cheek for a number of years and he asked the doctor to look into his mouth which the doctor did and said "No it doesn't look like that will be a problem". Mr. G talked generally to Dr. Thomas about being gay and whether it was biological or sociological and Dr. Thomas then said "I can do an examination that may be of help to you." Mr. G then went into an examination room and took off his trousers and lay on his back on the examination table resting on his elbows. Dr. Thomas said "I would like to get some fluid from you and will have to draw it up. Through the manipulation you may become erect but don't get embarrassed." He then using both hands squeezed Mr. G's penis starting at the bottom and moving up to the tip. Mr.G claimed that the manipulation was very forceful and the procedure lasted about ten seconds. He said that he did get an erection and the medical practitioner commented on the size of his penis and said "Like a lot of gay men, you have a big penis." Dr. Thomas did not take any specimen of Mr. G's semen whilst performing the manipulation on his penis.

Mr. G further alleged that after such penile examination Dr. Thomas performed an anal examination. Mr. G was still flat on his back and Dr. Thomas placed his finger up his anus and stated "This was the point that men will want to touch if you have sex with them". Mr. G subsequently realised that the doctor was manipulating his prostate. He alleged Dr. Thomas said at the time, "Can you feel that, how does it feel?" Mr. G gave no response. The doctor removed his finger. Mr. G got up and dressed and they both went back into the main consultation room.

Mr.G alleged that he then said to the doctor "I always assumed that the pleasure of anal sex was psychological" and the Doctor replied, "No, I just showed you," and seemed annoyed at Mr. G's question. He also said "I think you are biologically gay." Mr. G sat down and at some point he and the doctor were looking through the advertisements for prostitutes in the back section of the gay newspaper that he had brought with him. He said to the

doctor "I am not interested in passive anal sex," or words to that effect. The doctor replied, "Maybe you should practice with your fingers or a dildo in case you want to do this in the heat of the moment." The doctor continued to look through the newspaper and pointed out one person saying "I think he's active". He later phoned in the presence of Mr.G someone from the advertisements and had a short conversation with that person. After such conversation the medical practitioner said to Mr. G "You should come back and see me."

Mr. G further alleged that although he felt uncomfortable about his appointment with Dr. Thomas he did not think at the time that there was anything improper in his conduct. Approximately two days later he came to the conclusion that perhaps what the doctor had done had been a form of sexual abuse and he told [JB], who had previously been his defacto wife, about some of the aspects of the consultation although he did not tell her about the anal examination.

Prior to seeing Dr. Thomas, Mr. G had been in a sexual relationship with [JB] for about nine years. They had lived as defacto man and wife for two years up to 27 June 1995 when he told her that he considered that he was gay. They continued their sexual relationship for approximately five days thereafter and subsequently remained friendly. Shortly after informing [JB] that he was gay, Mr. G also told his parents and siblings.

[JB] gave oral evidence before the Tribunal which evidence substantially supported Mr.G's evidence. She said that she had ceased residing with Mr. G in approximately mid August 1995 and shortly thereafter visited him in order to take him to a medical centre as he had been ill. She said that on this occasion he looked nervous and told her that he had seen a doctor in the city a few days previously to talk about safe sex issues. He said to her that he felt as though the doctor had taken advantage of him. She became angry and upset and asked him what had occurred. Mr. G told her that the doctor had brought him to an erection and he could see no reason for his doing that, that he had told the doctor he had just come out and was unsure of what he was feeling and the doctor had said to him that "you're definitely biologically gay, you've got a big penis and that's a definite sign." She asked Mr. G, "Do you think he was gay?" And he had replied, "He stressed he was married and had kids. I think he was trying to discount that he was doing something improper."

Mr. G took no action in relation to the doctor's actions in the consultation but subsequently in the latter half of 1997 told [JB] that the doctor had also given him an anal examination when he had consulted him in August 1995. On 10 December 1997, he made a complaint to the Health Care Complaints Commission.

Mr.G was 25 years of age at the time of the consultation. He was an intelligent young man being an honours graduate in law from Macquarie University although [JB] described him as naive.

In response to such allegations Dr. Thomas agreed that he had seen Mr. G on 22 August 1995 and that the patient had informed him on that consultation that he had lived in a heterosexual relationship with a girl since the age of 16 but now felt attracted to men. Dr. Thomas also agreed that at such consultation there had been discussion concerning safe sex and the transmission of sexually transmitted diseases, that he had performed an oral examination of the Mr. G and that he had given the patient a genital and anal examination. He said that before conducting the examination he had asked the patient whether he wished to have it and the patient had said he did. This was confirmed by Mr.G in cross-examination (see Transcript 20 May 1998 page 44 lines 18-38). Dr. Thomas further conceded that in the course of the examination he performed he manipulated Mr. G's penis and that the patient may have obtained an erection. He also agreed that he had conducted the anal examination using a glove and lubricant with the patient lying on his back. He denied obtaining any fluid from Mr. G or that he had said to him "like a lot of gay men you have a big penis," or that he had said to Mr. G whilst anally examining him "This is the point that men will want to touch if you have sex with them," or that he had asked the patient whilst he was anally examining him "can you feel that, how does it feel?" or that he had expressed any opinion that Mr.G was biologically gay. He further denied that he made any telephone call to any person using an advertisement in a gay newspaper.

There are thus substantial conflicts in the evidence between the version given by Mr. G and that given by Dr. Thomas. In determining the facts the Tribunal is deeply conscious of the fact that each man was attempting to recall events which occurred three years ago and in the case of Dr. Thomas events which he had not been asked to recall until more than two years had elapsed from their occurrence.

The Tribunal is satisfied that in the consultation on 22 August 1995 there was a wide ranging discussion between the patient and the doctor concerning homosexuality and sexually transmitted diseases in particular. It is satisfied that there was some discussion concerning whether homosexuality was genetically determined or not and that there may have been some discussion concerning the size of Mr. G's penis possibly in the context of the sizes available for condoms. However the Tribunal is not satisfied that Dr. Thomas manipulated Mr. G so as to produce semen from him, that he said words to Mr.G to the effect that like a lot of gay men he had a big penis or that whilst anally examining him he said words to the effect that this is the point men will want to touch if you have sex with them or that he telephoned any person using an advertisement from a gay newspaper in Mr.G's presence.

In coming to these factual findings the Tribunal is satisfied that Mr. G was in a state of emotional turmoil at the time that he consulted Dr Thomas. The Tribunal further notes that Mr. G is unable to say whether Dr Thomas was the first doctor he had consulted about being gay, that he was very vague about the precise nature of the illnesses which he said he had after seeing Dr. Thomas and that he saw many doctors after Dr. Thomas but was unable to

give any specifics as to names, dates of consultation or the precise matters in respect of which the consultations were held although he did concede that he had been referred on at least two occasions to psychiatrists whom he had decided not to see. The Tribunal also notes that Mr. G did not think that there was anything improper in the conduct of Dr. Thomas at the time of the examination, that Dr. Thomas gave no indication to the patient that he was getting any pleasure out of the examination and considers that Mr.G's reasons for delaying his complaint unconvincing. The Tribunal is conscious that some aspects of Mr. G'S complaint are entirely consistent with his comments to [JB] some days after the examination, but it also notes that nothing was said to her about the doctor having telephoned using the advertisement in the gay press in the presence of Mr. G or that fluid was obtained by the doctor from Mr. G's penis or that the doctor carried out an anal examination of Mr. G.

In coming to the view that it is not comfortably satisfied on the balance of probabilities of the details of Mr. G's complaint where they conflict with the evidence of Dr. Thomas, the Tribunal has not overlooked that there were many inconsistencies and contradictions between the evidence which Dr. Thomas gave in the witness box, the two sets of notes which he gave to his solicitor ( Exhibits E and G), and his responses to the Health Care Complaints Commission's letters ( Exhibits A (5) & (7) ). However the Tribunal considers that such inconsistencies and contradictions are readily explicable when it is borne in mind that Dr. Thomas was endeavouring to respond to allegations made more than two years after the event with only his clinical notes to assist him and especially as those notes are not comprehensive. The Tribunal is also mindful of the fact that the consultation took approximately half an hour and for much of that time there was conversation between the doctor and the patient, whilst the words which are the subject of the particulars of the complaint would have taken at most one or two minutes to speak. Thus it considers it quite likely that Mr. G has drawn conclusions from such discussion which do not accurately reflect the content and context of the words spoken. Furthermore the Tribunal repeats the finding it made previously that it is not satisfied that Dr. Thomas is either homosexual or bisexual or that he has homosexual tendencies. If this be so then it is difficult to understand why he would have wished to have spoken the words attributed to him.

However even on the facts as found by the Tribunal in relation to the complaint brought by Mr. G a real question is raised as to whether the conduct of Dr. Thomas in performing the genital and especially the anal examination demonstrates a lack of adequate judgment by him in the practice of medicine and/or whether it was improper or unethical.

When asked in cross examination as to his reasons for conducting the penile and anal examination, Dr. Thomas said that he had three reasons: first, to check on the presence of pre-existing sexually transmitted disease; second, to demonstrate to Mr. G how he could examine himself for signs of any

sexually transmitted disease; and third, how to recognise sexually transmitted disease in other potential partners.

The Tribunal accepts in relation to the first of these reasons that when Mr.G said that he had been in a heterosexual relationship for nine years and had just come out, Dr. Thomas inferred that Mr. G was either bisexual or had had some previous homosexual experience. To that extent the Tribunal is not comfortably satisfied that Mr. G told the doctor that he had never had any prior homosexual relations.

Nevertheless in the Tribunal's view it is not appropriate for a medical practitioner to conduct a penile or anal examination of a male patient to check for signs of sexually transmitted disease simply because the patient has implied or indeed has said that he has had prior homosexual relations. Of course the situation would be different if the patient was concerned that he might have a sexually transmitted disease and had asked the doctor to examine him to ascertain if there were any signs of such disease but in the present case there was nothing to indicate that the patient was concerned that he had already contracted such disease, rather he was consulting Dr. Thomas for advice in relation to future safe sexual practices.

Furthermore the Tribunal also considers that the second and third reasons proffered by Dr. Thomas either individually or collectively with the first reason were not sufficient to justify the examinations which he conducted of Mr. G and especially that of the anus.

Moreover quite apart from the reasons advanced by Dr. Thomas the Tribunal is of the opinion that there was no adequate reason in the practice of medicine for the penile and anal examinations carried out by Dr. Thomas on Mr. G. and that the examinations were improper and unethical even though they were carried out with the patient's consent. In coming to this determination the Tribunal regards it as consistent with the opinions of Drs. Chung and Bunker both in their written reports (see Exhibits A and B ) and in their oral evidence and prefers their views to those of Dr. Finlayson (see Exhibit 3 page 2 ) to the extent that there is any inconsistency.

The Tribunal therefore considers that Dr. Thomas, in conducting the penile and anal examination of Mr. G, demonstrated a lack of adequate judgment in the practice of medicine and was guilty of improper and unethical conduct. It is thus satisfied that Dr. Thomas was guilty of unsatisfactory professional conduct within the meaning of section 36 of the Medical Practice Act 1992 as amended.

However the question is posed whether the unsatisfactory professional conduct of Dr. Thomas is of a sufficiently serious nature to justify suspension of the practitioner from practising medicine or the removal of his name from the register.

In many cases where there has been an inappropriate sexual examination of a patient, the Tribunal will be satisfied either by the very nature of the examination itself or from the surrounding circumstances that the reason why the inappropriate examination was conducted was sexual gratification or titillation of the medical practitioner concerned. In those cases as Litchfield quite clearly shows, the relevant conduct would obviously be regarded as being of a sufficiently serious nature to justify removal of the practitioner's name from the register and the Tribunal therefore would make a finding of professional misconduct (see also *Qidwai v Brown* [1984] 1 NSWLR 100).

However in this case the Tribunal is not satisfied that the reason for the examinations being conducted of Mr. G by Dr. Thomas was either sexual gratification or sexual titillation of Dr. Thomas. Rather it thinks that the examination came from an excessive zeal on behalf of the medical practitioner to ensure that his patient had no sexually transmitted disease. However in truth there was no reason to suspect sexually transmitted disease in Mr. G, as more detailed questioning would have ascertained. In those circumstances and bearing in mind that the consent of the patient was first obtained, the Tribunal is of the view that the unsatisfactory professional conduct of Dr. Thomas is not of a sufficiently serious nature to justify either his suspension from practising medicine or the removal of his name from the register.

The Tribunal therefore dismisses the complaint of professional misconduct in relation to the consultation and examination of Mr G. However it is apparent from the foregoing that the Tribunal is satisfied that the additional complaint which, with the consent of both parties, it treated as having been made, namely that Dr. Thomas had been guilty of unsatisfactory professional conduct within the meaning of section 36 of the Act in that he had demonstrated a lack of adequate judgment in the practice of medicine and engaged in improper conduct in the practice of medicine has been made out. Such unsatisfactory professional conduct is the conducting of inappropriate penile and anal examinations of Mr. G.

Before turning to consider the appropriate orders in the light of such determination the Tribunal also wants to record that it is very concerned about the position of the patient at the time that Dr. Thomas conducted the anal examination. According to both the doctor and Mr. G, the patient was lying on his back on the examination table with his legs pulled up when Dr. Thomas conducted the anal examination. Dr. Thomas conceded that this was not the position which a medical practitioner usually asks a patient to adopt when the practitioner wishes to conduct an anal examination. However he indicated that he used the position frequently both because of some problems with his fingers as a result of a previous episode of Lyme disease and also because he was more able to both feel the prostate and if necessary to massage the urethra for the purpose of obtaining a flow of pre-come fluid to indicate the presence or absence of venereal disease. In the Tribunal's view such a position would in fact make an adequate examination of the prostate more difficult for most examining medical practitioners and it

considers that except in extraordinary circumstances the more usual left lateral or right lateral positions should be adopted. (see also the report of Dr. Chung Exhibit 8 (9) page 4 ).

The Tribunal also considers that the adoption of such an unusual position fortifies its determination that the anal examination of Mr. G. was inappropriate. It has considered whether the conducting of the examination with the patient in such position should, when taken with all the other circumstances, be regarded as demonstrating that the doctor was indeed conducting the examination for personal sexual gratification. In finally rejecting such view, the Tribunal was much influenced by Dr. Thomas's candour in freely admitting that he had conducted the examination of Mr. G in that unusual position. It seemed to the Tribunal that had indeed Dr. Thomas conducted the examination for personal sexual gratification, he would have been most unlikely to have conceded that he had used the position.

Turning to the question of the appropriate orders:- It was urged on the Tribunal by senior counsel for the doctor that, having regard to Dr. Thomas's extensive prior practice of medicine and the limited nature of the adverse finding against him, a reprimand would be appropriate. On the other hand, senior counsel for the Health Care Complaints Commission submitted that a course of further education or monitoring of Dr. Thomas was required.

In the Tribunal's view any further education or monitoring of Dr. Thomas is unnecessary in order to protect the public or to maintain the standards of the medical profession. This is because the Tribunal is satisfied that in the light of the reasons it has given Dr. Thomas will in future adhere to the practice of not conducting a genital or anal examination except for diagnostic reasons after the patient has either complained of symptoms or has expressed a fear of having contracted a sexually transmitted disease and requested such an examination or where the patient is concerned about some physical incapacity and has requested the doctor to carry out such an examination to determine whether such incapacity exists. It is also confident that the doctor will abandon his practice of conducting anal examinations in the supine position.

However the Tribunal also considers that a reprimand would be insufficient in itself to bring home to Dr. Thomas and indeed to any other medical practitioner who might be tempted to engage in an inappropriate genital or anal examination, the serious breach of the standards of medical practice involved.

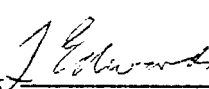
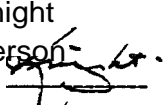
The Tribunal is very much concerned with the protection of the public. When a patient consults a medical practitioner, he or she places trust in that practitioner not to perform any examination or test unless that test or examination is medically appropriate in the circumstances. Dr. Thomas broke that trust in dealing with Mr. G and in the Tribunal's view he should be both publicly reprimanded and fined the sum of \$2,500.

Accordingly the formal orders made by the Tribunal are:-

2. That the complaint that Dr. Thomas was guilty of professional misconduct be dismissed;
2. That the additional complaint that Dr. Thomas was guilty of unsatisfactory professional conduct is proved;
3. That Dr. Maxwell Thomas be and is hereby publicly reprimanded for such unsatisfactory professional conduct; and
4. that Dr. Thomas be and is hereby fined the sum of \$2,500 to be paid to the New South Wales Medical Board within 28 days of this order.


Dated: . 25 September 1998

Judge W.H. Knight  
Deputy Chairperson



Dr. S. Messner  
Member

Dr. L Edwards  
Member



Mrs. J. Ellard  
Member