

Medical Practitioners Disciplinary Tribunal

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DECISION NO: 93/99/45D

IN THE MATTER of the Medical Practitioners
Act 1995

-AND-

IN THE MATTER of a charge laid by the
Director of Proceedings
pursuant to Section 102 of
the Act against **COLIN
FREDERICK
WAKEFIELD** medical
practitioner of Havelock
North

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mr P J Cartwright (Chair)

Mr P Budden, Dr R S J Gellatly, Dr J M McKenzie,

Dr D C Williams (Members)

Ms K G Davenport (Legal Assessor)

Ms G J Fraser (Secretary)

Mrs G Rogers (Stenographer)

Hearing held at Napier on Wednesday 30 June 1999

APPEARANCES: Ms T W Davis, Director of Proceedings

Mr C J Hodson QC for Dr C F Wakefield.

SUPPLEMENTARY DECISION:

- 1.1** **THE** Director of Proceedings of the Health & Disability Commissioner initially charged Dr Wakefield that on or about 19 July 1998 while treating a patient, being a registered medical practitioner, he acted in such a way that amounted to disgraceful conduct in a professional respect in that he provided services of an inappropriate professional standard. Particularised the charge stated that Dr Wakefield touched his patient's left and right legs with his lips and/or failed to obtain her informed consent to touch her legs with his lips.
- 1.2** **AT** the hearing the Director of Proceedings applied for and was granted leave by the Tribunal, with Mr Hodson's consent, to amend the charge from disgraceful conduct in a professional respect to conduct unbecoming a medical practitioner which reflects adversely on fitness to practise medicine.
- 1.3** **THE** Tribunal by its Decision No. 82/99/45D dated 26 July 1999, found Dr Wakefield guilty of conduct unbecoming a medical practitioner which reflects adversely on his fitness to practise medicine.
- 1.4** **THIS** Supplementary Decision issues for the purpose of determining penalties.

1.5 **IN** considering the nature and level of penalties Ms Davis explained that in her view the two principal aspects which should be taken into account by the Tribunal are:

- 1) That Dr Wakefield's actions showed a lack of consideration and awareness of this patient's sensitivity. He crossed the boundaries between appropriate and inappropriate behaviour and failed to recognise the potential emotional impact that his actions may have had on his patient;
- 2) In addition Dr Wakefield failed to recognise the power imbalance between himself and his patient and the subsequent dangers and sensitivities involved with the physical contact he had with his patient. He also failed to realise that the nature of the contact he had with his patient could have been interpreted as an intimate action.

1.6 **SECONDLY** Ms Davis submitted that education competence review or supervision types of penalties would be more beneficial than a fine or censure.

1.7 **FINALLY**, pursuant to Section 110(1)(f) of the Act, Ms Davis seeks costs and expenses in relation to the investigation undertaken by the Health & Disability Commissioner and the costs and expenses of the prosecution by the Director of Proceedings.

1.8 **IN** summary it was submitted by Ms Gibson on behalf of Dr Wakefield:

- (i) The Tribunal found that if there had been informed consent, the technique itself would not have resulted in a disciplinary finding.
- (ii) Dr Wakefield acknowledges that it was inappropriate to use this technique, and not to inform the patient of this.

- (iii) Dr Wakefield has been immensely distressed by the knowledge of how the patient viewed the use of the temperature technique. The Medical Council has already been involved in this matter through its Health Committee, and has found no cause for concern.
- (iv) Given that this is a matter of informed consent essentially, on the Tribunal's finding, there can be no requirement for a competence review of Dr Wakefield; indeed his colleagues speak highly of his dedication and thoroughness.
- (v) The unsolicited letters in support of Dr Wakefield very clearly show a doctor who is dedicated, thorough and with a good rapport with his patients.
- (vi) The extensive publicity that this hearing in conjunction with the complaint by Mrs xx has had, has already caused significant distress to Dr Wakefield and his family, and is a punishment in itself.

2. ORDERS:

2.1 **AFTER** having due regard to the submissions made by counsel, the Tribunal orders that Dr Wakefield be censured, pay a fine of \$1,000 and contribute 30% of the costs and expenses of and incidental to the investigation by the Health & Disability Commissioner, the prosecution by the Director of Proceedings and the hearing by the Tribunal.

2.2 **FINALLY** the Tribunal orders publication of the above orders in the New Zealand Medical Journal pursuant to Section 138 of the Act.

DATED at Auckland this 13th day of October 1999

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P J Cartwright

Chair

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