



Inappropriate sexual comments

Charge: A Complaints Assessment Committee charged the Doctor with disgraceful conduct in a professional respect. The particulars of the charge alleged the Doctor over the period 22 February 1995 and 28 March 1995 in the course of his management and treatment of his patient:

1. Asked questions and made comments of an inappropriate and sexual nature;
3. Performed one or more of the internal vaginal examinations in an inappropriate sexual manner; and
4. First discussed and then suggested to his patient that he should use on her a 'perineometer' which he had made himself which was inappropriate and for which there was no medical justification; and
5. When confronted by his patient on or about 28 March 1995 destroyed or sought to destroy her medical notes.

Particular 2 was withdrawn during the course of the hearing.

Background: The patient alleged the Doctor made inappropriate and sensitive remarks of a sexual nature whenever she had a consultation with him. According to the patient he asked inappropriate questions of a sexual nature and he kept trying to talk about sexual matters all the time. She alleged he made comments about her pubic hair, discussed the use of vibrators with her, spoke about how she should use vaginal fluids as a perfume and asked her questions about her sex life including questioning the size of her partner's penis. She further said he suggested she get her partner to perform oral sex on her.

The patient told the Tribunal that the Doctor tried to sexually stimulate her with a speculum. She alleged that he gave her Xylocaine gel and told her to 'massage' her clitoris to see what happened. She said he wanted her to masturbate with it and that during one consultation he was rubbing his penis through his trousers and was definitely aroused.

The patient further alleged during the course of one consultation the Doctor produced a 'gadget' which looked like a vibrator. It transpired that the device was made by the Doctor, and was called a perineometer. It was designed to test the strength of a woman's pelvic floor muscles.

The patient's evidence was that on the last day she consulted the Doctor she telephoned him and explained to him that the reason she went to him was for a few prescriptions and not to learn about sex or hear about other people's sexual problems. Later that day she went in to pick up a prescription and she was very angry. She told the Doctor that she wouldn't be coming back again so he could destroy her notes as she wouldn't be needing them. The Doctor cut up the medical file in front of her.

The Doctor vehemently denied the allegations made against him by the patient and explained that he was deeply distressed and horrified by her claims. He explained that

during his career he developed an interest in sexual education and, in particular, female sexual function and dysfunction.

The Doctor said that his interest in the pelvic floor of women related to the problems which he observed patients suffering with bladder incontinence and vaginal prolapse. He explained that he developed the perineometer for legitimate health purposes. A gynaecologist gave evidence that it was appropriate to use a perineometer to assess pelvic floor strength.

The Doctor ardently denied making any comments or asking questions which were of an inappropriate sexual nature to the patient. He said he gave the patient Xylocaine because of her complaints of soreness in the vaginal area during intercourse, as it had the effect of inducing numbness. He said he would have advised the patient to apply it externally to the area that was sore and did not tell her to apply it to her clitoris.

The Doctor told the Tribunal that the allegations he was sexually aroused and that he may have been masturbating himself when the patient was in his surgery were completely false. He suffered erectile dysfunction and provided the Tribunal with documentary evidence that showed he sought assistance for this condition long before he saw the patient.

There appeared to be some agreement between the patient and the Doctor that he requested the patient to tighten her pelvic floor muscles whilst he conducted an internal examination. The Doctor said that he would have done this for the sole purpose of assessing the strength of her pelvic floor muscles. He denied he attempted to sexually stimulate the patient with a speculum and said that he did not suggest he could use the perineometer on her.

The Doctor explained that he cut up the notes with a guillotine in front of the patient as he thought if he gave them to her, she would destroy them. He placed the notes in a rubbish bin. As soon as the patient left he retrieved the notes and placed them in an envelope. He said he realised that the better approach would have been to photocopy them and give the patient the records but retain a copy.

Finding: The Tribunal found the Doctor guilty of professional misconduct.

The Tribunal considered when the Doctor was cross examined it was very apparent that his recollection of what he said to the patient during the consultations of February and March 1995 had become blurred. The Tribunal was satisfied the Doctor no longer had an accurate recollection of what he said to the patient when he discussed these issues with her. It was equally satisfied that the patient's recall of these matters was generally accurate.

When considering Particular 1, the Tribunal noted that none of the consultation notes recorded any suggestion the patient was consulting the Doctor about issues relating to possible sexual dysfunction.

The Tribunal was in no doubt that when the patient first saw the Doctor he made assumptions about her sexual experience. He assumed that she was a prostitute and that she would be a willing listener to some of his views and theories about sex. The Tribunal was also in no doubt that the complainant did tell the Doctor that she was anorgasmic and that this fuelled his willingness to talk about sexual issues with the complainant.

The Tribunal considered the patient did not consult the Doctor about the way she might enhance her sexual life. She consulted him about specific clinical issues. It was the Doctor who pursued issues of a sexual nature with the patient believing she was interested in learning about his views and theories concerning sexual dysfunction. The Doctor appeared to have been unaware of the fact that the patient was not interested in his questions and comments concerning sexual dysfunction. It considered it was the Doctor's responsibility to appreciate the patient did not welcome his raising the sexual issues. However, it was confident the Doctor pursued these topics out of a genuine interest for the welfare of his patient and that he was not motivated by personal sexual gratification.

The Tribunal considered the Doctor's raising of sexual issues with the patient in the circumstances of this case breached the standards which the profession and the community expect of a general practitioner in the Doctor's position. Furthermore the Tribunal believed the Doctor's serious breaches of standards warranted a disciplinary finding against him. The Tribunal found that in relation to the first alleged particular of the charge the Doctor's conduct amounted to professional misconduct.

When considering Particular 3, the Tribunal was satisfied the Doctor performed four vaginal examinations, and that each of those examinations was clinically justified.

The Tribunal could readily understand the patient's suspicions and concerns about the way she believed the Doctor performed one or more of the vaginal examinations on her. The Doctor's raising of sexual topics in circumstances which caused concern and distress to the patient may easily have led her to believe that he was acting in an inappropriate way during the course of conducting vaginal examinations. However, the Tribunal was not satisfied to the requisite standard that the Doctor attempted to sexually stimulate the patient during the course of any of the vaginal examinations, or that he acted in a sexually inappropriate manner when conducting any vaginal examination.

When considering Particular 4, the Tribunal accepted the Doctor constructed the 'perineometer' for the purpose of either using it himself or allowing patients to use it to assess the strength of their pelvic floor muscles. The perineometer was not a vibrator.

The Tribunal understood why the patient was concerned and confused when the Doctor produced the perineometer. In the context of consultations in which the Doctor raised a number of sexual issues, the patient could be excused for thinking the perineometer was some form of home-made sexual device. The Doctor again completely misread his patient's concerns. There was no obvious clinical justification for the Doctor to show the patient the perineometer. The Tribunal was satisfied this was another example of the Doctor pursuing issues which interested him but which were not relevant to the reasons why he was being consulted by his patient.

While the Tribunal gave the Doctor the benefit of the doubt and concluded there was no sinister motive behind his showing the patient the perineometer, and suggesting it be used, the Tribunal was nevertheless confident there was no clinical justification for the Doctor's actions. In the circumstances of the case it was inappropriate for him to show the device to the patient in circumstances which caused her distress and concern.

When considering Particular 5, the Tribunal accepted that the patient told the Doctor that he could destroy her notes and in order to placate her he proceeded to cut her medical notes up in her presence. It further accepted that as soon as the patient left the Doctor retrieved the notes from a rubbish bin and placed them in an envelope for safekeeping.

The Tribunal considered it was not appropriate for the Doctor to cut up the patient's medical notes and his actions in cutting up the notes constituted a failure to adhere to the standards expected of a medical practitioner. However, the charge alleged the Doctor 'destroyed or sought to destroy' the patient's medical notes. The Doctor did not destroy the notes, nor did he seek to destroy them. The Tribunal was satisfied that no disciplinary finding was justified in relation to the Doctor's breaches of his duty when he cut the medical notes with his guillotine.

Penalty: The Tribunal ordered that the Doctor be censured and pay costs in the sum of \$10 000.

The Tribunal believed a lenient penalty could be imposed upon the Doctor in this case for the following reasons:

- The Doctor has practised medicine for approximately 44 years without any other complaints of a disciplinary nature being brought against him.
- The events complained of occurred a considerable time ago and there were delays in bringing this matter to the attention of the Tribunal.
- The Doctor no longer practises medicine and one of the purposes of punishment in a disciplinary forum is to discourage further offending. He has not practised medicine for some years and is never likely to practise again.

When assessing costs, the Tribunal accepted that the Doctor and his wife were not in a position to pay a substantial sum. In addition, the Doctor successfully defended a charge of disgraceful conduct and was found guilty in relation to only two particulars of the five particulars which were initially laid against him.

Addendum decision: The Tribunal ordered the Doctor be granted permanent name suppression. It further ordered publication in the New Zealand Medical Journal a summary of the Tribunal's decision.

The full decisions relating to the case can be found on the Tribunal web site at www.mpd.org.nz Reference No: 02/97C.