Sexual Relationship with a Patient – Professional Misconduct (Med09/120P)

Charge
A Professional Conduct Committee (PCC) charged that the Doctor was guilty of professional misconduct. The particulars of the charge were as follows:

1. Between May 2007 and September 2008, the Doctor entered into a sexual relationship with Mrs U whilst Mrs U was a current patient of his, and continued to treat Mrs U during the relationship; and
2. The Doctor failed to adequately comply with conditions imposed by the Medical Council of New Zealand on his scope of practice, in particular, he:
   • Failed to adequately attend and actively participate in the Royal New Zealand College of General Practitioners seminar programme during 2008.
   • Failed to sit and attain a pass in the PRIMEX assessment in November 2008.

Finding
The Doctor admitted the charge and accepted that the conduct alleged amounted to professional misconduct. The Tribunal found that the Doctor’s conduct did amount to professional misconduct.

Background
In September 1990 the Doctor married Mrs N. When they met in 1988 Mrs N had three children from previous marriages. One of these children was Mrs U who became the Doctor’s stepdaughter. She was a member of his family for about twenty years, since she was approximately 13 years old.

In April 2002 Mrs U married Mr U and they had a child, L, who was born in 2003 and was delivered by the Doctor. Mrs U was a patient of the Doctor’s between approximately 21 December 1999 and 18 October 2008. The Doctor was also Mr U’s and L’s general practitioner.

In late May 2007, the Doctor and Mrs U commenced a sexual relationship. At the time that the sexual relationship commenced, Mrs U was a current patient of the Doctor. She was also employed at the medical practice where the Doctor worked. The sexual relationship continued throughout the remainder of 2007 and 2008, and was still continuing at the time of the hearing.

Prior to the sexual relationship developing, Mrs U viewed her relationship with the Doctor as one of stepfather and stepdaughter.
Mrs U recalled that she asked for her clinical notes to be transferred to another medical centre in December 2007. However, Mrs U's clinical notes were not transferred until August 2008 and she continued to receive treatment from the Doctor after the clinical notes were transferred.

In June 2007, Mrs U consulted the Doctor who confirmed that Mrs U was pregnant and some months later Mrs U gave birth to I. In August 2008, a paternity test report very strongly supported the conclusion that the Doctor was the biological father of I. In December 2008, the Doctor moved out of his home with Mrs N. Soon afterwards, the Doctor moved in with Mrs U and at the time of the hearing continued to live with her along with L and I. At the time of the hearing Mrs U was four months pregnant with her and the Doctor’s second child.

In August 2007, after the affair between the Doctor and Mrs U had begun, the Medical Council of New Zealand (the Council) concerned about the Doctor's practice (not associated with his relationship with Mrs U of which the Council knew nothing) imposed a number of conditions on the Doctor’s scope of practice which were effective from 30 August 2007 onwards.

The Doctor complied with most of the conditions. However, The Doctor failed to comply with two of the conditions, as follows:

- Sit and attain a pass mark in the Primex assessment in November 2008; and
- Attend and actively participate in the RNZCGP seminar programme during 2008. Attendance was mandatory unless there were material reasons which precluded him from attending. Prior approval had to be sought from the Council for non-attendance.

Due to the Doctor's failure to adequately attend and complete the RNZCGP seminar programme in 2008, he was ineligible to sit the Primex assessment in November 2008.

**Reason for Finding**

**Particular 1**—The Tribunal found that during the period May 2007 and October 2008 the Doctor was acting as Mrs U’s general practitioner.

The Doctor:

- Ordered investigations.
- Received results of investigations.
- Received discharge summaries which in the normal course are sent to the patient’s general practitioner.
- Prescribed medication on at least 10 occasions.
- Made referrals.

Having regard to the nature of the relationship of the Doctor as Mrs U’s stepfather, employer, and general practitioner, and Mrs U’s obvious vulnerability, the Tribunal had little hesitation in reaching the view that the Doctor’s acts could reasonably be
regarded by the Tribunal as constituting malpractice. The Tribunal further considered that the Doctor’s conduct was likely to bring discredit to the profession and that the conduct did warrant a disciplinary sanction.

**Particular 2**—The Tribunal considered the Doctor’s failure to adequately attend and actively participate in a seminar programme, was not the sort of conduct which, by itself, would necessarily amount to professional misconduct and warrant a disciplinary sanction; and similarly with the Doctor’s failure to sit and pass a particular assessment.

However, the Tribunal had regard to the conduct in relation to this practitioner and accepted the PCC’s submission that the Doctor’s failures and the context in which those failures arose, were relevant to the Tribunal’s consideration. While it did not consider that either of the matters referred to in particular 2 by themselves amounted to professional misconduct, it did find that cumulatively, within the particular context, they did; and warranted a disciplinary sanction.

**Penalty**

The Tribunal made the following orders:

- The registration of the Doctor was cancelled with the cancellation taking effect 20 working days after delivery of the Tribunal’s decision.
- The Doctor was censured.
- The Doctor was to pay 10% of the costs.

There were permanent name suppression orders made.

**Appeal**

The Doctor appealed the Tribunal’s Substantive Decision to the High Court in particular the cancellation of the Doctor’s registration. The High Court dismissed the appeal [*Dr N v PCC* (High Court, Wellington, CIV 2009-485-2347, Ronald Young J, 19 March 2010)].

The full decisions relating to the case can be found on the Tribunal web site at [www.hpdt.org.nz](http://www.hpdt.org.nz)

Reference No: Med09/120P.