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Charge Detail Summary

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File Number: Med04/03P

Practitioner: Adam Jeremy Nuttall

Hearing Start Date: 31/03/2005

Hearing End Date: 31/03/2005

Hearing Town/City: Wellington

Charge Characteristics: **Sexual misconduct - sexual relationship with patient or former patient or partner of patient** (Established)

Consultations - inappropriate/inadequate (Established)

Prescribing - inappropriate/inadequate (Established)

Note taking - inadequate/inappropriate

Note taking inadequate
(Established)

Additional Orders: **Name Suppression to Practitioner**
Practitioner declined interim name suppression
[7Med0403P.pdf](#)

Name Suppression to Complainant and/or Patient and/or client

Complainant and children granted permanent name suppression

[7Med0403P.pdf](#)

Jurisdiction

Jurisdiction to order screen - Tribunal ruled it did have jurisdiction

[7Med0403P.pdf](#)

Decision: **Full Decision** [8Med0403P.pdf](#)

Precis of Decision:

Charge

A Professional Conduct Committee (PCC) charged that Dr Nuttall was guilty of professional misconduct. The particulars of the charge alleged:

1. That Dr Nuttall entered into an inappropriate/or sexual relationship with a patient, in circumstances where Dr Nuttall was aware his patient was in a vulnerable state because of her marital problems and [Not for publication by Order of the Tribunal] for which she was being counselled by Dr Nuttall. This aspect of the charge was said to relate to the period around June 1993;
2. From June 1993 to August/September 1994 Dr Nuttall continued to treat the complainant and her children even though he had entered into a sexual relationship with her;
3. From 1995 to at least March 1998 Dr Nuttall continued to prescribe medication and write medical reports for the complainant despite the fact they were having a sexual relationship; and
4. Doctor Nuttall failed to make adequate notes in relation to his consultations and treatment of the complainant.

Background

The complainant and her children became patients of Dr Nuttall in October 1991. At that time Dr Nuttall was treating the complainant's husband. They were having

marital difficulties and Dr Nuttall offered them marital counselling.

In early 1992 the complainant was subjected to **[Not for publication by Order of the Tribunal]**. Dr Nuttall offered the complainant counselling for this even though he had no training or experience in such matters.

Between 14 October 1991 and 23 August 1994 Dr Nuttall's very brief records indicated a total of sixty-one counselling sessions. As the counselling sessions evolved Dr Nuttall became more and more intimate with the complainant. The complainant was adamant that at a session held on 10 June 1994 Dr Nuttall kissed her sexually on the lips and caressed her genitals. Doctor Nuttall denied these events occurred at this time, but did not dispute that his relationship with the complainant became extremely intimate during 1995.

In September 1994 the complainant and her husband separated.

The complainant told the Tribunal that she and Dr Nuttall had sexual intercourse in his clinic in early 1995. Doctor Nuttall thought intercourse did not occur until later in 1995. Dr Nuttall continued to treat the complainant's children for a number of matters during the ensuing years.

Doctor Nuttall initially suggested that the doctor/patient relationship with the complainant terminated in March 1995 when, at his suggestion, the complainant saw another general practitioner for gynaecological matters. However, the medical certificates and letters issued by Dr Nuttall for the complainant and the many pharmacy records, clearly established that Dr Nuttall continued to treat the complainant and her children after March 1995.

Doctor Nuttall's intimate sexual relationship continued with the complainant through to July 2000. The relationship fluctuated in its intensity during the years 1995 to 2000. There were occasions when Dr Nuttall endeavoured to end the relationship but it was apparent that any periods of "cooling off" were short lived.

Throughout this time the relationship had been kept secret, although the complainant did confide in two friends and two counsellors about her relationship with Dr Nuttall.

In July 2000 Dr Nuttall left his wife and children and his relationship with the complainant ceased to be a secret.

At the hearing Dr Nuttall admitted a series of shortcomings which he acknowledged constituted professional misconduct as defined in the Health Practitioners Competence Assurance Act 2003 (the Act.)

Finding

The Tribunal found Dr Nuttall guilty of professional misconduct.

Legal test for professional misconduct

The Tribunal was of the view that much of the earlier jurisprudence concerning the meaning of professional misconduct under earlier legislation continues to be relevant under the Act. In particular the Tribunal considered that the test as to what constitutes professional misconduct continues to involve a two step process.

The first step involved an objective analysis of whether or not the health practitioner's acts or omissions can be reasonably regarded by the Tribunal as constituting:

- malpractice; or
- negligence; or
- otherwise meets the standard of having brought, or was likely to bring, discredit to the practitioner's profession

The Tribunal considered the meaning of malpractice and looked at two dictionary definitions. The Collins English dictionary defines it as meaning:

The immoral, illegal or unethical conduct or neglect of professional duty. Any incidence of improper professional conduct"

The same term is defined in the Shorter Oxford English dictionary as meaning:

Improper treatment or culpable negligence of a patient by a physician or of a client by a lawyer...a criminal or illegal action: wrong doing, misconduct

The term negligence has a specific meaning in law. However, the Tribunal considered it highly unlikely that, prosecuting health authorities would need to prove all the criteria of negligence required by common law, in order to establish negligence on the part of a health practitioner. The Tribunal believed the term negligence as used in section 100 (1)(a) of the Act focuses on a practitioner's breach of their duty in a professional setting and it would not be necessary for a prosecuting authority to prove damage. Therefore, for example, a practitioner who fails to make appropriate notes of a consultation may not cause damage to their patient, but may nevertheless be guilty of negligence within the Act.

When considering the definition of "bring discredit to the profession" the Tribunal quoted Gendall J in *Collie v Nursing Council of NZ* (HC Wellington, AP 300/99, 5 September 2000):

"To discredit is to bring harm to the repute or reputation of the profession. The standard must be an objective standard for the question to be asked by the Council being whether reasonable members of the public, informed and with knowledge of all the factual circumstances, could reasonably conclude that the reputation and good standing of the nursing profession was lowered by the behavior of the nurse concerned."

The Tribunal considered the second step of the process required it to be satisfied that the health practitioner's acts or omissions require a disciplinary sanction for the purpose of protecting the public and/or maintaining professional standards and/or punishing the health practitioner.

Tribunal's finding for each particular

First Particular

The Tribunal was totally satisfied that the first particular was established. However, as the events in question occurred in June 1994 not 1993 the Tribunal changed the charge accordingly, under clause 15(1) of the First Schedule to the Act.

The Tribunal considered Dr Nuttall committed cardinal errors by entering a relationship with the complainant which was both sexual and inappropriate. The Tribunal was satisfied his action constituted gross negligence, malpractice and brought the medical profession into discredit. It found his actions justified severe disciplinary sanction for the purposes of protecting the public, maintaining professional standards and to punish him.

Second Particular

The Tribunal considered the evidence made it abundantly clear that Dr Nuttall continued to treat the complainant and her children as their family doctor after having entered into a sexual relationship with the complainant. Again, the dates were incorrect and the Tribunal amended the particular so that it referred to the period June 1994 to November 2001.

The Tribunal found his actions constituted gross negligence, malpractice and brought the medical profession into discredit. It found his actions justified severe disciplinary sanction for the purposes of protecting the public, maintaining professional standards and to punish him.

Third Particular

The Tribunal was in no doubt that Dr Nuttall continued to prescribe medication for the complainant and her children through to December 2001, even though the complainant was seeing another general practitioner for some limited purposes. Particular three was amended to reflect this fact.

The Tribunal found his actions constituted gross negligence, malpractice and brought the medical profession into discredit. It found his actions justified severe disciplinary sanction for the purposes of

protecting the public, maintaining professional standards and to punish him.

Particular Four

The Tribunal agreed with the PCC expert who described Dr Nuttall's records of consultations with the complainant as "very poor". The Tribunal considered the complete absence of any meaningful records was both unusual and totally unacceptable.

The Tribunal found Dr Nuttall's poor records constituted negligence on his part and his omissions in this regard justified disciplinary sanction for the purpose of maintaining professional standards.

Penalty

The Tribunal considered it had no option other than to order the cancellation of Dr Nuttall's registration as a medical practitioner in New Zealand.

The Tribunal believed there were six aggravating factors in this case, which required the imposition of the severest penalty available.

- The complainant was clearly a very vulnerable patient.
- Dr Nuttall lacked the requisite skills to undertake the counselling he attempted.
- Dr Nuttall continued to treat the complainant and her children after he developed romantic feelings towards the complainant and commenced a sexual relationship with her.
- The treatment Dr Nuttall provided the complainant included prescribing medication that included drugs of dependence.
- Dr Nuttall did not undertake any formal or appropriate transfer of the complainant to another practitioner.
- Dr Nuttall's records and notes were totally inadequate.

The Tribunal further ordered that before Dr Nuttall may apply to re-register as a medical practitioner in New Zealand he is required to undergo an assessment and comply with all directions and requirements of the Medical Council's Sexual Misconduct Assessment Team.

The Tribunal imposed a comparatively modest order of costs, namely \$10,000, due to Dr Nuttall's limited financial position.