

Doctor failed to comply with employer's chaperone policy

Charge—Dr Gopalrao Chebbi, registered medical practitioner of Auckland, (the Doctor) was charged with professional misconduct by the Director of Proceedings (DP).

The charge alleged that the Doctor conducted an intimate examination on a patient without first offering the patient a chaperone in the context of: Previous Medical Council of New Zealand (MCNZ) requirements for him to use a chaperone;

- A previous voluntary undertaking to the Medical Council that he would use a chaperone;
- A recommendation from the Medical Council that he use a chaperone and/or;
- His obligation in his contract with his employer that he comply with reasonable directions policies and instructions and/or his employer's chaperoning policy.

Finding—The hearing proceeded on the basis of an Agreed Summary of Facts. The Tribunal found the Doctor guilty of professional misconduct adding that professional propriety, especially between a male doctor and female patients, must always be observed. The Doctor failed to observe the requirement which had been imposed on him since 2006.

Background—In June 2005, following a complaint regarding an unchaperoned breast examination that the Doctor had performed, the MCNZ imposed a condition on the Doctor's practice that he not see any female patients without a third person being present and that he have a chaperone (who was to be a health practitioner) present during any intimate examinations of female patients.

In December 2006 at the Doctor's request, the MCNZ removed the requirement to have a third person present during consultations with female patients. In March 2007 the MCNZ placed further conditions on the Doctor's practice following termination of his employment at a medical centre because of a complaint from a female patient on whom he had performed an unchaperoned breast examination. On 9 May 2007 the Doctor entered into a contract for services with Te Puna Hauora (the Employer) and was required to comply with the Employer's directions policies and instructions in relation to the performance of his services. When the Doctor commenced work the Employer also put in place a chaperone policy for the organisation which the Doctor was made aware of and directed to comply with. In May 2008 following an application by the Doctor, the MCNZ removed all conditions on the Doctor's practice but required the Doctor to sign a voluntary undertaking to use a chaperone for every intimate examination on female patients and to display a chaperoning notice in the waiting room and to notify his employers of this. The voluntary undertaking was removed by the MCNZ in May 2009 after the Doctor applied for its removal. The Doctor was strongly advised by the MCNZ to continue using a chaperone. The Employer's chaperone policy remained in place. On 15 February 2011 a female patient

saw the Doctor for the first time complaining of sore, aching breasts, stabbing pains where her ovaries were, had missed her period and had been vomiting. She thought she could be pregnant but a pregnancy test was negative. The Doctor undertook an abdominal examination without first offering the Patient a chaperone. The Doctor then examined the Patient's breasts, again without first offering the Patient a chaperone. During the breast examination the Patient became upset although the Doctor did not interpret this at the time. After leaving the consultation room the Patient appeared upset, and after discussion with staff, made a written complaint to the Employer. The Doctor learned of her complaint shortly after the consultation and apologised to the Patient that she had felt upset. The Doctor's contract with his Employer was terminated on 16 February 2011 for breaching the chaperoning policy. The Doctor accepted that the charge amounted to professional misconduct.

Penalty—The Tribunal imposed a 6-month term of suspension but deferred the suspension for one year pending any further complaint concerning inappropriate intimate examinations.

The Tribunal also ordered that the Doctor:

- Be censured;
- Be fined \$1,000;
- Pay 25% of the costs of and incidental to the prosecution, investigation and the hearing amounting to approximately \$12,500; and
- For 36 months from the date of the decision, conditions were imposed that the Doctor have a female chaperone present when seeing female patients for any intimate examination; he notify any current or prospective employer of this condition; that his future employment (or place of work) be approved by the Medical Council's Registrar and Medical Advisor; At all times a notice is to be shown in both the waiting room and the Doctor's consultation room informing patients of the chaperone requirement; and at the discretion of the Medical Council a random audit be undertaken, including checking for appropriate chaperone notices and a review of the notes of female patients who have undergone intimate examinations. The Doctor is to meet the cost of this audit.

The Tribunal directed publication of its decision and a summary of the decision on the Tribunal's website and in the New Zealand Medical Journal.

The full decisions relating to the case can be found on the Tribunal web site at www.hpdt.org.nz
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