

MEDICAL TRIBUNAL OF NEW SOUTH WALES

MEDICAL PRACTICE ACT 1992

RE JAMES ALEXANDER JUSTIN WOOLCOCK, a registered medical  
practitioner

Deputy Chairperson:	His Honour Judge B.C.M. Wall, Q.C. Dr.
Members	B. Pollard
	Dr. J. Vallentine
	MsM. Brophy

Thursday, 14th September, 1995

REASONS FOR DETERMINATIONS

The Complaints

The Tribunal constituted under the Medical Practice Act 1992 (the "Act") is charged with inquiring into three complaints made by the Health Care Commissioner against Dr. James Alexander Justin Woolcock (the practitioner) which have been referred to the Tribunal for hearing and determination.

The form of the three complaints is reproduced:

COMPLAINT 1

That Dr. James Alexander Justin Woolcock has been convicted in New South Wales of an offence.

Particulars of Complaint 1 are as follows:

A Certificate of Conviction appended to the complaint certifies that on 24th day of November 1992 the practitioner was convicted and sentenced by the Supreme Court of New South Wales for the felony that on or about the 2nd day of March 1990 he did maliciously shoot at Virginia Gail Woolcock with intent thereby to do grievous bodily harm to the said Virginia Gail Woolcock. The Certificate of Conviction also certifies that on arraignment the practitioner pleaded guilty to the commission of this felony.

#### COMPLAINT 2

That Dr. James Alexander Justin Woolcock in not of good character.

Particulars of complaint 2 are as follows:

1. On or about 2nd March 1990 at his home at Faulconbridge the practitioner:
  - (a) in the loungeroom held his son by the feet, dangling him and twisting him around;
  - (b) at about 10.45 p.m. in a bedroom:
    - (i) grabbed hold of his wife and violently shook her;
    - (ii) grabbed his wife by the hair, held her head back with a bowie knife against her throat and suggested they go to his bedroom to have sexual intercourse;
  - (c) in the kitchen;
    - (i) with one hand placed tightly around his wife's throat screwed her nightdress tightly around her throat;
    - (ii) cut off her nightdress with the bowie knife and smeared her with blood from the wound on his arm saying "this will be the last time";
    - (iii) lifted his son off the ground with both hands around his throat, abused him for not trying at school and threatened to kill him;
    - (iv) threw his son onto the floor and kicked him;
    - (v) held a knife to his son's throat and threatened to kill him;

- (d) in his bedroom:
  - (i) slapped and punched his wife about the face, head and body;
  - (ii) picked up a rifle and pointed it at her head;
  - (iii) fired a rifle out of the window;
  - (iv) pushed her backwards onto the bed and shot her in the upper arm with intent to do grievous bodily harm;
  - (v) threatened to kill her.
  
- 2. Between 1985 and 1990, the practitioner engaged in the following violent behaviour:
  - (a) in June 1985 he assaulted his wife with his fists;
  - (b) in August 1985 he assaulted his wife with his fists; threatened her with a sword and a knife; tied her up; and urinated on her;
  - (c) in August 1985 he put a rifle to his wife's head and threatened to kill her;
  - (d) in 1986 he fired a rifle indiscriminately throughout the house and pointed it at his wife;
  - (e) in July 1987 he assaulted his wife with his fists; held a rifle to her head; and threatened to kill her;
  - (t) in March 1989 he assaulted his wife with his fists; threatened to kill her; fired a rifle out of a window; put a rifle to his wife's head and pulled the trigger (the rifle not discharging); and put his fist through a door;
  - (g) in September 1989 he assaulted his wife by grabbing her hair and pushing her into an oven and punched a fish tank, cutting his arm and severing a tendon in his wrist;
  
- 3. Over the period March 1990 to November 1992, the practitioner constantly breached his conditions of bail by attempting to approach and contact his wife and son;
  
- 4. Over the period May 1990 to the present time, the practitioner constantly breached restraining orders issued by the Family Court of Australia by attempting to approach and contact his wife and son.

### COMPLAINT 3

That Dr. James Alexander Justin Woolcock has been guilty of professional misconduct in that he:

- (i) has been guilty of improper or unethical conduct relating to the practice of medicine.

Particulars of complaint 3 are as follows:

1. Over the period 1985 to 1990 the practitioner administered substantial quantities of prescription drugs to himself, including Normison, Catovit and Rohypnol.
2. Over the period 1987 to 1990 the practitioner consumed excessive quantities of alcohol on a regular basis with the result that he was often unable to keep appointments with patients at the Penrith Medical Centre.
3. Over the period 1987 to 1990 the practitioner on numerous occasions went on holidays for lengthy periods without informing the staff at the Penrith Medical Centre or making alternative arrangements for the care of his patients during his absence.

Amendments to the Medical Practice Act after the presentation of the evidence and the closing addresses

At the time of the making of the complaints and their referral to the Tribunal for hearing and determination, the law to be applied to these complaints was the enacted law in the Medical Practice Act, 1992 (the Act) which came into force and effect on 1 July 1993.

The Act repealed the Medical Practitioners Act, 1938 (the former Act) which, until its repeal, was the enacted law regulating the hearing and determination of complaints against a medical practitioner.

Under the former Act where there were proved complaints made against a medical practitioner that he or she had been convicted of an offence in New South Wales or was not of good character the Tribunal was expressly empowered (s31R) to make protective orders providing for the deregistration or suspension from practice of the practitioner.

For reasons which are not entirely clear, the Act when it came into force on 1 July 1993 did not expressly confer powers on the Tribunal to make protective orders for deregistration or suspension from practice on proved complaints of this kind, i.e. conviction of an offence or lack of good character. The probable explanation is that the draftsman omitted to include these categories of complaints in s64 by inadvertance. The disciplinary powers of the Tribunal to make protective orders on proved complaints made against medical practitioners are to be found in Division 4 of Part 4 of the Act. Section 60 in Division 4 is an enabling provision. It enables the Tribunal (or a Professional Standards Committee) to exercise any power or combination of powers conferred on it by this Division on proof or admission of the subject matter of a complaint. The general disciplinary powers of the Tribunal or a Committee to make protective orders are conferred by Section 61 and Section 62. The power to order deregistration or suspension is not conferred by these sections. Before its amendment, Section 64 of the Act expressly conferred on the Tribunal alone the power to order deregistration or suspension. However, the exercise of this power by the Tribunal was limited to the cases of proved complaints that a medical practitioner was not competent to practise medicine or that a medical practitioner was guilty of professional misconduct. Section 39 of the Act provides for the categories of complaints that may be made about a registered medical practitioner. These categories, in short form, are described in the section to be:

1. Criminal conviction.

2. Unsatisfactory professional conduct.
3. Professional misconduct.
4. Lack of competence.
5. Impairment.
6. Lack of good character.

It will be observed that until its amendment, Section 64 of the Act empowered the Tribunal to make orders for deregistration or suspension on complaints limited to the categories 3 and 4 above only.

This deficiency has now been addressed by legislative amendments under the Health Legislation Amendment Act 1995 (the amending Act) which came into force and effect on and from 17 June 1995. The amending Act extended the categories under Section 64 to include categories 1 and 6 above.

The provisions of Section 64 as now amended are set out (the amendments to the section are in italics):

- 64.(1) The Tribunal may by order suspend a person from practising medicine for a specified period or direct that a person be deregistered if the Tribunal is satisfied (when it finds on a complaint about the person):
- (a) that the person is not competent to practise medicine;  
or
  - (b) that the person is guilty of professional misconduct.  
or
  - (c) that the person has been convicted of an offence (either in or outside New South Wales) and the circumstances of the offence render the person unfit in the public interest to practise medicine,' or
  - (d) that the person is not of good character.

In addition, Schedule 5, Part 4 of the Medical Practice Act 1992 was amended to include the following clauses:

- PART 4 Provisions consequent on enactment of the Health Legislation Amendment Act 1995
- 20 Definition  
In this Part the Act means the Health Legislation Amendment Act 1995.
- 21 Suspension or deregistration
- (1) A finding referred to in section 64 (1)( c) and made after the commencement of Schedule 1 (1) of the Act authorises the making of an order under section 64(1) even if:
- (a) the finding is made in relation to an offence that was committed, or
- (b) the complaint concerned was made.
- before that commencement.
- (2) However, subclause (1) does not apply if the offence concerned was committed on or after 1 July 1993 (the date of the repeal of the Medical Practitioners Act 1938) and before the date of the commencement of Schedule 1 (1) of the Act.
- (3) A finding referred to in section 64 (1) (d) does not authorise the making of an order under section 64(1) if the complaint concerned was made before the commencement of Schedule 1 (1) of the Act.

The Explanatory Notes accompanying the Health Legislation Amendment Bill 1995 before its enactment (which do not form part of the Act) relevantly are:

#### Overview of Bill

The object of this Bill is to amend certain Acts relating to health matters as follows:

- (a) to empower the Medical Tribunal to suspend a person from practising medicine, or to deregister the person, on the grounds that the person has been convicted of an offence (and the circumstances of the offence render the person unfit to

practise medicine) or on the grounds of the lack of good character.

Suspension or deregistration (item (1))

At present, the Medical Tribunal may suspend a person from practising medicine for a specified period, or direct that a person be deregistered, only if the Tribunal is satisfied (when making a finding on a complaint about the person) that the person is not competent to practise medicine or is guilty of professional misconduct

In this legislative background a threshold point of law was raised for determination by the Deputy Chairperson of the Tribunal at the commencement of the hearing of the complaints on 15 May 1995. The Deputy Chairperson raised with counsel for the parties the question whether the Act empowered the Tribunal to make orders for deregistration or suspension in the event the Tribunal found complaints 1 and 2 proved, the Tribunal noting that complaint 1 was an admitted complaint.

Counsel for the respondent informed the Tribunal that it would be argued on behalf of the practitioner that under the Act the Tribunal was not empowered to make orders for the deregistration or suspension of the practitioner on proof of either complaints 1 or 2. Counsel submitted that the power to order deregistration or suspension of a practitioner was conferred by s64 of the Act only and was limited to complaints alleging impairment or professional misconduct. Counsel for the complainant informed the Tribunal that it would be argued that the Tribunal was empowered under s60 of the Act to order deregistration or suspension on proof of these complaints. The Tribunal heard submissions from both counsel on this point at the conclusion of the evidence in their closing addresses on 9 June 1995.

After hearing submissions from both counsel on 9 June 1995 the Deputy Chairperson ruled that, on the proper construction of the Act, the Tribunal was not empowered under s60 to make an order for deregistration or suspension on proof of complaints 1 and 2. At the time of this ruling the Tribunal was informed by



counsel for the practitioner that a bill had passed both houses of the Legislature in the form of the Health Legislation Amendment Bill 1995. A copy of this Bill was considered by the Tribunal and was referred to by both counsel in the course of their submissions on the point.

The reasons for the ruling placing this construction on the Act may be stated shortly. The question posed for decision is whether the Tribunal was at liberty to place a construction on s60 of the Act which would extend the categories of proved complaints beyond that provided in s64 in respect of which the Tribunal is empowered to make orders for deregistration or suspension. Counsel for the complainant submitted that this question should be answered in the affirmative. The first step in his argument was that the power under s64 to order deregistration or suspension is found in Division 4 of Part 4 of the Act. The next step in his argument is his submission that s60 enabled the Tribunal to exercise any power or combination of powers conferred on it under Division 4 of Part 4 of the Act on proof of the subject matter of a complaint. Counsel submitted that it then followed that by the joint effect or operation of s60 and s64 the Tribunal was empowered to make an order for deregistration or suspension in relation to any proved or admitted complaint. If this argument be sound then a curious result would follow. Notwithstanding the plain intention found in s64 that the power to deregister or suspend be confined to category 3 and 4 complaints, the Tribunal would nonetheless be empowered to make orders for deregistration or suspension in all six categories of complaint. This would be plainly an absurd result. On the one hand under s64 of the Act the Tribunal would not be empowered to make orders for deregistration or suspension on a proved complaint of unsatisfactory professional conduct yet under s60 in combination with s64 it would be so empowered. Such a construction would render the operation of s64 nugatory.

The correct approach in the construction of s60 and s64 where found in Division 4 of Part 4 of the Act is to identify s60 as a section providing a general enactment in

relation to the powers of the Tribunal and/or a Committee and to identify s64 as a section providing a specific enactment in relation to the powers of the Tribunal. Where, as here, a question arises in relation to the construction of a statute that one section may be repugnant to the other and which is to control the other, the rule of construction to be applied is that whenever there is a particular enactment (s64) and a general enactment (s60) in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the Act to which it may properly apply: See *Pretty v Solly* (1859) 26 Beav. 606, at 610, per Romilly MR.

On the proper construction of these two sections, s64 controls s60 in the manner indicated in the statement of the rule. The explanatory notes accompanying the amending Act make it clear that the Minister charged with the administration of the Act has placed the same construction on the Act and that is the reason for the amending legislation.

Accordingly, the Tribunal is not empowered under the Act before its amendment to make orders for deregistration or suspension in relation to Complaints 1 and 2. A further point should be mentioned; the amendments to s64, which came into effect on and from 17 June 1995 do not have retrospective operation to a complaint alleging lack of good character made before the amending Act came into force and effect. Hence, the amending legislation has no operation in relation to complaint 2. The amendments, however, have a limited retrospective operation in relation to a complaint alleging a criminal conviction as is here the case in relation to complaint 1: See Clause 21(1) of Part 4 of Schedule 5 of the Act as now amended.

In these proceedings the Tribunal made a formal finding that complaint 1 was proved as an admitted complaint after the case for the complainant and the case for the

practitioner had been closed and at the conclusion of the closing addresses of counsel for the parties. The Tribunal considered that in these circumstances it would be wrong in principle for it to postpone its formal finding on complaint 1 on a "wait and see basis" in relation to the proposed amending legislation. In coming to this decision the Tribunal took into account that the proceedings in relation to complaint 1 were commenced and the presentation of the evidence and the arguments of counsel were completed under the law as it then applied under the Act before its amendment and not under the law under the Act as it may be amended.

### The standard of proof

The standard of proof to be applied by the Tribunal in determining these complaints alleging misconduct is based on the civil standard, i.e. proof on the balance of probabilities, but qualified having regard to the gravity of the questions to be determined.

The formulations of the standard of proof appropriate to these complaints are expressed in the judgments of Dixon J (as he then was) and Rich J in *Briginshaw v Briginshaw* (1938) 60 CLR 336. Dixon J said (at 368):-

... [T]he importance and gravity of the question makes it impossible to be reasonably satisfied of the truth of the allegation without the exercise of caution and unless the proofs survive a careful scrutiny and appear precise and not loose and inexact.

Rich J (at 350) said:-

The nature of the allegation requires as a matter of common sense and worldly wisdom the careful weighing of testimony, the close examination of facts proved as a basis of inference and a comfortable satisfaction that the Tribunal has reached both a correct and just decision.

## INTRODUCTION

Before proceeding to review the evidence presented in support of these complaints it would be useful for the Tribunal to set out the pertinent details of the practitioner's personal and professional life. The detail of this summary is gleaned from written statements made by Dr. Woolcock and his wife which were admitted into evidence in this inquiry.

Dr. Woolcock is now aged fifty years. He graduated from Sydney University with degrees in Medicine and Surgery and became registered as a medical practitioner in 1975. After completing his residency at the Repatriation General Hospital at Concord he practised as a general practitioner, first as a locum and then in partnership until 1980. From 1980 until 1983 he practised as a general practitioner in solo practice. In 1984 he sold his practice and joined two inner city practices as an associate. In the period 1985 -1986 he became interested in the concept of extended hours medical centres and was employed by two companies which specialised in the area of developing these centres.

In 1986 he decided to construct and then conduct an extended hours medical centre at Penrith after carrying out feasibility studies at six prospective locations around Sydney. He obtained a lease of a suitable site and then borrowed substantial moneys from a bank and from a private source to finance the cost of construction and fitting out the centre. A corporate vehicle was used for the proprietorship of the centre and he and his wife were the shareholders and sole directors. The medical centre opened in 1987. At that time he and his wife lived at Lane Cove and at the end of the first year of operation he and his wife moved to Faulconbridge in the Blue Mountains to avoid oppressive travelling time to and from the centre.

Mrs. Woolcock performed administrative functions at the Centre and Dr. Woolcock in addition to providing patient care was the medical director of the Centre and responsible for its financial administration.

Although the centre was servicing in excess of 80,000 patients per year from 1988 onwards the venture encountered serious financial difficulties. Dr. Woolcock claims he commenced the venture undercapitalised and because of his administrative and clinical work at the centre he became personally overcommitted in the ongoing management of the centre. The lessor of the premises where the centre was conducted commenced proceedings against the holding company claiming a substantial amount for costs of redesigning air conditioning and lighting in the premises and early in 1988 the private loan creditor demanded a renegotiation of the loan agreement or repayment. After proceedings were commenced in the Equity Court Dr. Woolcock arranged for a re-negotiation of the loan on more onerous terms and in the course of these proceedings incurred substantial legal and accountancy fees.

Dr. Woolcock also gave an account of regular staffing problems encountered because of unsatisfactory staff, unsatisfactory services provided by the centre's accountants in relation to financial advice and management and difficulties in obtaining the services of experienced general practitioners to practise at Penrith because of the travelling time from their places of residence. Finally, towards the end of 1989 Dr. Woolcock was hospitalised for a week when surgical procedures were carried out to clear his nasal passages which led to complications and the need for a further surgical procedure.

Dr. Woolcock claims that after five years of unremitting stress caused by the financial and other problems associated with starting up and managing the medical centre he suffered from depression and felt the need for counselling, but did not obtain it.

Dr. Woolcock met his former wife in December 1969 and they were married in February 1971. There is one child of the marriage, a son now aged 14 years (Alexander). In his statement (Exhibit 3) Dr. Woolcock gave an account of ongoing marital problems and discord between them (these became serious from 1985 onwards) and the causes which he attributed to these problems which culminated with the shooting incident in March 1990.

Mrs. Woolcock gave a history that throughout most of her married life with the practitioner he suffered bouts of depression and mood swings. In the early years of the marriage there would have been one or two episodes a year of short duration. However, she gave a history that in the period of five years leading up to their separation in 1990 these episodes became more frequent (about three to four a year) and more severe and lasted for about a week. She gave a history that during the period when Dr. Woolcock became involved in litigation proceedings concerning claims made against the medical centre he became extremely depressed, had severe mood swings and was consuming large quantities of alcohol at the home. He was also self-medicating with prescription drugs to sleep, control his mood swings and to pep himself up. She also gave a history of being subjected to verbal and physical abuse by Dr. Woolcock and at times being threatened with firearms and cutting weapons. It is unnecessary to refer to the detail of her complaints against Dr. Woolcock on these matters in this summary. The essential matters of her complaint against Dr. Woolcock are set out in the particulars in support of complaint 1 and complaint 2 (reproduced in these Reasons). Following the shooting incident which occurred on the evening of 2 March 1990 Mrs. Woolcock was admitted to the Westmead Hospital Casualty Department on 3 March 1990 and underwent emergency surgical treatment for a serious gunshot wound inflicted by Dr. Woolcock. On 13 March 1990 Mrs. Woolcock entered a private hospital and underwent a plastic surgical procedure for a skin graft to the site of the wound.

In April 1990 Mrs. Woolcock moved to live with a friend, Mrs. Pitman, at an address in Dural and stayed with her until June 1990. It is during this period Mrs. Woolcock complains that Dr. Woolcock tried to contact her at Mrs. Pitman's home by telephone in breach of his bail undertaking. Subsequently Mrs. Woolcock was placed on a witness security programme and moved to an address provided by the unit administering the programme in June 1990.

By a bail undertaking dated 15 May 1990 it was a condition of Dr. Woolcock's release on bail that, inter alia, he not approach or attempt to approach and that he not contact or attempt to contact Mrs. Woolcock and their son, Alexander. By an order of the Family Court dated 17 May 1990 Dr. Woolcock was restrained, inter alia, from doing any act or thing that would interfere with Mrs. Woolcock's quiet enjoyment in any premises in which she lived.

Mrs. Woolcock also gave a history of Dr. Woolcock writing letters directly to her or their son, Alexander, via her solicitor or addressed to the Pitman address and that he also sent numerous gifts and letters to their son Alexander at the office of her solicitor which she complained were in breach of his bail undertaking and Family Court order.

Dr. Woolcock and Mrs. Woolcock are now divorced. Dr. Woolcock and Mrs. Woolcock could not reach agreement on how the medical centre was to be administered and disposed of following their separation and there were contested proceedings in the Family Court in relation to property settlement. Eventually the medical centre was not able to pay the recurrent expenses, in particular, rent due and payable to the centre's lessor and following forfeiture of the lease by the lessor the medical centre was sold and new proprietors took over the conduct of the centre in April 1991. Dr. Woolcock was asked by the new proprietors to continue

as the medical director and he remained in that position until April 1992 when by his own choice he resigned from this position.

Dr. Woolcock became a bankrupt when his estate was sequestrated because of his inability to pay personal liabilities incurred by him in the setting up of and the conduct of the medical centre.

On 16 December 1992 Dr. Woolcock was convicted in the Supreme Court of New South Wales of the offence of maliciously shooting at Virginia Gail Woolcock with intent to do grievous bodily harm and on conviction was sentenced to a minimum term of three years to date from 16 December 1992 and an additional term of one year to date from 16 December 1995, the total sentence expiring on 15 December 1996. Dr. Woolcock is eligible to be considered for release on parole on and from 15 December 1995.

In 1990 Dr. Woolcock formed a relationship with his present common law wife, Constanteena Woolcock, and since November 1990 and until his incarceration in December 1992 they lived together as man and wife. She became pregnant to him and bore a son, Jamieson on 25 August 1993 and has been supportive of him throughout his incarceration. They plan to marry on his release from prison.

Complaint 1 - a complaint alleging the commission of an offence under the Crimes Act.

At the commencement of the Tribunal's hearing of the complaints counsel for the practitioner informed the Tribunal that the practitioner admitted the subject matter of this complaint. In the course of the hearing the practitioner tendered a signed written admission of the subject matter of the complaint (Exhibit 6).



By s159 of the Act where, as in this case, a registered medical practitioner admits in writing to the Tribunal the subject matter of a complaint no inquiry need be conducted by the Tribunal into the complaint and in these circumstances the Tribunal is empowered by s60 to exercise any power or combination of powers conferred on it under Division 4 of the Act (s61, s62 and where appropriate, s64).

Accordingly, the Tribunal received the evidence presented in relation to this complaint to determine what would be an appropriate protection order or orders in the circumstances of the admitted complaint.

Evidence was admitted in the complainant's case which included:

- \* Certificate of Conviction
  
- \* The oral testimony of Mrs. Virginia Woolcock and verified written statements made by her in relation to the Tribunal proceedings and the sentence proceedings.
  
- \* A fact statement prepared by the police officer responsible for the preparation of the prosecution brief against the practitioner.
  
- \* Transcripts of evidence given at the sentence proceedings in the Supreme Court including the evidence of the practitioner.
  
- \* Written statements obtained by the investigating police from the practitioner's son, Alexander James Woolcock.
  
- \* The sentencing remarks of Slattery AJ.

The Tribunal has considered this material together with the evidence given by the practitioner in the proceedings before the Tribunal. On its review of the evidence overall the Tribunal is satisfied that there is nothing in the evidentiary material before it which in any way significantly qualifies or conflicts with the findings of the learned sentencing judge as to the objective circumstances in which the offence was committed by the practitioner and his subjective circumstances at that time. Indeed, the evidentiary material before the Tribunal is confirmatory of the sentencing remarks.

Accordingly, the Tribunal adopts the sentencing remarks of the learned judge and with respect repeats them as its findings in relation to the circumstances in which the offence particularised in the complaint was committed.

The relevant sentencing remarks are reproduced:

On the afternoon of Friday 2 March 1990, when the three members of the family were home the prisoner was drinking beer and watching television. The victim thought that he was then in an extremely bad mood.

While she was preparing dinner in the kitchen she heard her son call out from the lounge room and on investigation the prisoner had his son by the feet and he was dangling him and twisting him around. According to the son, his father, who had grabbed him by his feet, was swinging him around for about five minutes.

When the boy was released he ran upstairs in a distressed state.

After discussion between them about their son,' the prisoner resumed his position in the lounge room, drinking beer. About five minutes later the prisoner, who said he felt uptight, asked the victim if she had any Valium, but when only Ativan was available he took two tablets each of one milligram.

Later still the prisoner left the home and drove away in his car. He returned about twenty or thirty minutes later, he prepared a meal for himself (he had declined the victim's earlier offer of a meal) and he ate it in front of the television. The victim stated his mood appeared much worse at this stage and he was snapping remarks at her. She took the boy upstairs to his room and then went to her bedroom, which was a spare room where she went to sleep about 9pm.

The victim said that at about 10.45 pm she was awakened by the prisoner, who had hold of her and was shaking her violently. He was then completely

naked and had blood smeared over his body. The prisoner, who had a cut under his arm, was carrying a large bowie style knife. The prisoner then grabbed her by the hair, he held her head back with the knife against her throat and suggested they go to his bedroom for sexual intercourse. The victim who said she was extremely frightened, described him as very aggressive, he pulled her out of the bedroom but instead of taking her to his bedroom, he took her downstairs to the kitchen where she was subjected to abusive and degrading language. In the kitchen the prisoner, with one hand placed tightly around her throat, screwed her nightdress tightly around her throat. Next he cut off her nightdress with the bowie knife and smeared her with blood from the wound on his arms saying "This will be last time".

When she heard her son moving around in his bedroom, the prisoner called him down to the kitchen and when he did so the prisoner, after referring to the victim as a slut and a pig, lifted his son off the ground with both hands around his throat abusing him for not trying at school and making derogatory remarks about the victim.

According to the victim, the prisoner threatened to kill his son, who was crying, if he did not improve. He then threw his son on to the floor and after kicking him he ordered the boy, crying and shaking, to bed. As the victim, at the prisoner's direction, began to leave the kitchen to settle the boy down the prisoner pulled the telephone from the wall and ripped out the wires. The victim comforted the boy and, on leaving his room, the prisoner who was then in his bedroom screamed out to her to get into his room. When she entered his room she saw a number of guns. Lying on the bed there were knives on the floor, a new fan was smashed into little pieces, there was a hole in the floor next to the fan, a hair dryer was also smashed into little pieces and a bedside lamp was also broken.

According to the victim, the prisoner went berserk, he yelled and screamed accusations against her 'or his failures and the failure of their marriage as well as accusations against her parents and his own parents. She said he also slapped her and punched her about the face, head and body.

He also smashed things in the ensuite bathroom. When the victim told him she realised the marriage was over and she would go, the prisoner said 'No, you won't, this is it this is the finish. This is the end you're just making excuses anyway" and he hit her again.

The victim stated that the prisoner then picked up a rifle and pointing it to her head, he told her to clean up the mess. He also discharged the rifle through a window into the ground. As she was picking up the objects, the prisoner told her to find a needle and thread so he could stitch the wound in his arm. When this was attempted unsuccessfully because the needle and thread were the wrong size, the prisoner became aggressive and abusive towards the victim. The victim described the events surrounding the shooting as follows:

He had, I think it was the Ruger 303 in his hands and I got off the bed and was trying to defend myself by saying that he had done these things to himself. He then became very angry and he said you fucking fat cow, you're a liar, you'll pay, it's all over.' He then pushed me backwards on to the bed and as he did this he raised the rifle to about his hip level and he pulled he trigger causing the rifle to discharge I fell

backwards on to the bed and I felt a sharp stinging pain to my right arm I looked at it and saw that I had a gunshot wound to my arm and a large part of my flesh was gone and I was starting to bleed. I said 'James, stop this.' He said 'No, you die tonight. I told you its over.' I said 'The police will take you to gaol and where does Alexander go, who does he have?' He said 'It doesn't matter any more if the police come.' I then saw James load the rifle again and he said 'We will all go tonight and finish it all off'.

When the prisoner rejected the victim's request to do something about his arm, he went into the bathroom. She heard bottles being broken, towels being ripped up and shouting from him. On coming out of the bathroom the prisoner kicked the wall and he kicked a hole in the gyprock. Next he started to have a shower. His finger, which had been cut was bleeding. He also fell in the shower cutting his buttock on a piece of glass. The victim wrapped her wounded arm in towels; she also took medication. When the victim tried to bandage the prisoners wounds, he pulled the dressing off. While the victim was in the bathroom changing the dressing on her arm, the prisoner carried items downstairs. He also started a fire outside the kitchen. After the victim had obtained more towels to stop the bleeding from her arm, the prisoner said the police would be there soon and he needed more ammunition. When things became quiet the victim saw the prisoner, still naked, sitting resting against a wall with the gun across his knees. He appeared to be either asleep or unconscious.

On the evidence presented the Tribunal is comfortably satisfied that the substance of the particulars of this complaint have been proved to its satisfaction.

The maximum penalty that may be imposed under the law for the felony committed by the practitioner is 25 years penal servitude. This fact alone indicates the gravity of the offence. It is self-evident that the facts in relation to the commission of this offence reveal most reprehensible criminality on the part of the practitioner; indeed a degree of criminality which is abhorrent to all members of the community and brings into question his fitness to remain a member of an honourable and self-respecting profession. A strong case could be advanced that the appropriate protective order for this proved complaint is deregistration or, at the least, suspension for a substantial period of time. However, as already mentioned in these reasons, at the time of the making and the determination of this complaint by the Tribunal the relevant provisions of the Act did not empower the Tribunal to make protective orders of this kind.

The Tribunal considers that in the interest of the public and the profession stringent conditions should be imposed on the practitioner's entitlement to practise should he elect to resume practice as a medical practitioner following his release from prison.

The Tribunal shall refer to these conditions later in these reasons after it has dealt with complaint 2 which alleges that the practitioner is not of good character.

**Complaint 2 - a complaint alleging the practitioner is not of good character.**

Particulars 1 and 2 of the complaint go to the heart of the practitioner's fitness to discharge his responsibilities to the community, to his profession and to the standards of conduct generally accepted and expected by the community and the profession of its medical practitioners.

The allegations in particulars 3 and 4 are disputed by Dr. Woolcock. He denies he was in breach of the bail undertaking and court orders as alleged. On the issue as to whether he was in breach as alleged in this particular the Tribunal notes that a complaint that he was in breach as alleged has not been brought before the relevant court for determination. The Tribunal considers it unnecessary to review at length the evidence of the practitioner and Mrs. Woolcock on this disputed issue. It suffices to say that after carefully reviewing the evidence the Tribunal is satisfied that if the practitioner were in breach as alleged, it was not a serious breach, his conduct was not motivated by a contemptuous disregard for either the relevant court or the welfare of Mrs. Woolcock and their son. His correspondence to his wife and son is in evidence. The Tribunal has read the correspondence. The correspondence to the son is unexceptional and is of the kind one would expect from a father genuinely suffering anguish and despair caused by separation. The sentiments expressed to the son are commendable and not objectionable. There is no hostile reference to Mrs. Woolcock in the correspondence.

Similarly, the correspondence to Mrs. Woolcock in its content contains no threat or hostile reference to her. The Tribunal accepts that it would cause her emotional strain to receive this correspondence but in the view of the Tribunal no exception could be taken to what is written in the correspondence. The Tribunal also notes that this correspondence was received by Mrs. Woolcock's solicitors so that a vetting procedure was in place, so to speak.

The Tribunal concludes that proof of particulars 3 and 4 of the complaint does not lead to a conclusion that the practitioner is not of good character.

The Tribunal has carefully considered the evidence of Dr. Woolcock and Mrs. Woolcock which deal with the subject matter of particular 1 and of this complaint. There is no real dispute as to the essential details of this particular which refer to the commission of the offence on the evening of 2 March 1990. Dr. Woolcock's account of the events leading up to him shooting his wife that evening is a confused account at best. What is clear is that he became angry with his wife that evening which led to arguments and he became intoxicated by consuming beer and cognac in excessive quantities and also self-medicated with Ativan and Normison to treat his tiredness and depression.

It is little wonder then that he has an imperfect recollection of the events of the afternoon and evening leading up to the shooting incident. The paucity of his recollection is demonstrated in the way he concluded his account of what happened that day in his written statement (Exhibit 3):

It is my recollection that as I was dozing off my ex-wife came into my room and said words to the effect, "Are you working tomorrow or are you bludging at home?"

I believe a serious argument ensued and I shot my ex-wife."

The Tribunal has earlier in these reasons stated its findings in relation to the objective circumstances in which this offence was committed.

Dr. Woolcock disputes a number of the allegations made against him in particular 2. For example, he denies the urinating incident took place; that he discharged firearms in the house or fired shots outside the house; that he threatened Mrs. Woolcock with firearms and cutting weapons as alleged; that he inflicted physical harm to her of the kind described by her in her evidence.

It is not necessary for the Tribunal to embark on a lengthy review of the evidence on these disputed issues. It suffices to say that the Tribunal has carefully considered the evidence of Mrs. Woolcock and her manner of giving it and likewise, has carefully considered the evidence of Dr Woodcock and his manner of giving it. The Tribunal has cautioned itself that the history of their relationship and the serious marital disturbances and discord (to use an euphemism) over a number of years which led to the marriage coming to an end in horrifying circumstances, her evidence could be coloured and exaggerated to some extent as to some of the incidents occurring in the marriage in years past. All that said, the Tribunal has no hesitation in concluding that Mrs. Woodcock impressed as a witness of credit on the substantial issues in dispute. The Tribunal preferred her evidence and considered it to be a more reliable account of the incidents that occurred between her and her husband which are particular in the complaint.

The Tribunal finds that the matters of complaint set out in particular 2 of this complaint are substantially proved by the evidence of Mrs Woodcock.

In assessing Dr Woodcock's character, in the light of its findings in relation to particulars 1 and 2, factors which should be acknowledged and taken into account by the Tribunal include the following:

1. No human character is without flaw, and any defect or flaw in character would need to reach a level of seriousness and relevance sufficient to warrant a finding of lack of good character to a threshold that would affect fitness to practise medicine.
3. The intrinsic seriousness of the proven misconduct. There may be personal misconduct by a medical practitioner of a kind deserving of strong disapproval and condemnation from all responsible members of the community but which has little or no bearing on fitness to practise medicine. The circumstances of the proven misconduct should be closely examined to determine whether the misconduct renders the person unfit to practise medicine
2. A finding that a medical practitioner is not of good character in the context of fitness to practise medicine generally, if not universally, results in loss of entitlement to practise medicine. The Tribunal has kept in mind that before Complaint 2 may be found proved the complainant has the burden of persuading the Tribunal that on the preponderance of the evidence it should be comfortably satisfied that at the time of the hearing of the complaint Dr. Woolcock suffered from such a defect of character as to make him unfit to be held out as a registered medical practitioner.
3. The underlying qualities of character shown in previous and other conduct and whether the proven misconduct should be viewed as an isolated episode and hence atypical or uncharacteristic of the practitioner's normal qualities of character: Several referees from the nursing and medical profession including a former patient and friend have given strong opinions of Dr. Woolcock's underlying goodness of character. They have had a close personal and professional relationship with him and give reasons based on their association why he should still be deemed to be of good character



notwithstanding his conviction which is considered by them to be uncharacteristic behaviour on his part.

5. Where, as here, the proven misconduct of the practitioner is confined to his behaviour towards his wife in the matrimonial home during a closed period there is a danger that when one attempts to judge the character of Dr. Woolcock as a whole, the focus of attention on the matters of evidence in support of complaint 2 may lead to too much weight being given to those matters in proportion to the rest of his life and character. There is a need to view the matters of complaint in the pattern of the practitioner's life as a whole.

On the question of the practitioner's character the Tribunal has given careful consideration to the material placed before it in his case. This material includes: -

- \* The report of Dr. Westmore, a specialist psychiatrist, dated 13 March 1995 and his oral testimony before the Tribunal.
- \* The two reports of Ms Helen Toner, a Senior Psychologist in the employ of the Department of Corrective Services dated 23 November 1994 and 13 March 1995 and her oral testimony before the Tribunal.
- \* Written statement (undated) of Constanteena (Deena) Woolcock.
- \* Character and professional references from registered nurses Binns, Bird and Lunderwald, from registered medical practitioner Dr. David Fox, from registered pharmacist, Jacob Gunther and from former patient and friend, C.R. Mottee.
- \* The evidence of the practitioner.

The Tribunal notes that the character and professional referees speak highly of the practitioner's skill and ethics and dedication to his professional responsibilities to provide patient care and all consider his behaviour which resulted in his conviction to be uncharacteristic of his normal behaviour.

The Tribunal notes that there is a strong and stable family relationship between Dr. Woolcock and his common law wife and their son (Jamieson). In her statement she describes him as a gentle and loving person and she states she has never been subjected to any act or threat of violence by him. She has supported him throughout his incarceration with regular family visitation and stands ready to support him on his release.

Dr. Bruce Westmore, a forensic psychologist was called as a witness in the case for the practitioner and his written report dated 13 March 1995 (Exhibit 4 ) in which he set out the history he obtained from the practitioner and his opinions and conclusions in relation to that history was admitted into evidence in the practitioner's case.

This report was prepared at the request of the practitioner's solicitors on the understanding that it would be used "as part of Dr. Woolcock's application for medical re-registration".

The significant matters reported on, in outline, were as follows:

The practitioner voluntarily attended Dr. Westmore for psychiatric therapy and counselling during the period 1990 to 1992, in all there were 33 consultations during this period. In addition the practitioner had a further consultation with Dr. Westmore on 8 February 1995 for the purpose of Dr. Westmore updating his findings in relation to the practitioner.

The opinions of Dr. Westmore, which are expressed in his report are based on his contact with the practitioner during these consultations.

Dr. Westmore obtained a history from the practitioner of the events leading up to the shooting incident on 9 March 1990 but of the event itself the practitioner had little recollection.

Dr. Westmore also obtained from the practitioner histories on the following subject matters:

- \* Family History and Personality Development
- \* Drug and Alcohol History
- \* Past Medical History
- \* Personal History

The report contains details of the practitioner's progress under treatment and records his attitudes towards his former wife and son. The report also details the present de facto relationship with Mrs. Constandeena Woolcock and their son.

Under the subject heading "Possibilities of Further Violence" Dr. Westmore stated that he is of the opinion that "a repeat episode" of the violent behaviour of the practitioner is "at this time ... negligible". Dr. Westmore's rationale for this opinion is that the precipitating factors have been removed, i.e. extreme depression, financial worries, marital conflict and disharmony and excessive consumption of alcohol and that the practitioner now is aware of the role played by

excessive use of alcohol and has more understanding of his vulnerability to mood disturbance.

Dr. Westmore's findings in relation to the practitioner are set out under the subject heading "Opinions and Conclusions" and are reproduced:

As can be seen this is an extremely complicated case in which a multitude of factors in combination have resulted in a severe behavioural disturbance leading to Dr. Woolcock's current predicament. The combination of a mood disturbance, alcohol excess, minor tranquillisers, antidepressants, acute or chronic marital stress and the pressures of professional responsibility and financial uncertainty resulted in Dr. Woolcock's behaviour becoming disinhibited and aggressive resulting in his wife being injured. Impulsivity and dyscontrol were undoubtedly present during the course of this behaviour. The source of his aggression was related to a long standing dissatisfaction concerning his relationship with his wife, but also as a result of his inability to extricate himself from it.

Dr. Woolcock is not in any way cognitively or intellectually disturbed in the sense that he does not suffer from an organic brain syndrome which may impair his judgment, his capacity to plan or comprehend or aspects such as his ability to attend and concentrate. He does not suffer from a mental illness.

Dr. Woolcock has, in my view, evidence of some personality dysfunctioning. He is not completely happy with this concept, and seems to feel that it reflects some essential or fundamental flaw in his character. I indicated my views that he has some strong dependent and narcissistic traits, his powerful intellect and strong verbal skills at times make him appear to be somewhat arrogant and self-centred.

As a superficial level, Dr. Woolcock continues to appear to externalise a great deal of responsibility for what happened to his wife. These include the difficulties in their relationship, his wife herself, financial and business problems and dissatisfaction with his job as a general practitioner. If he is challenged on these views, he maintains them but at the same time he can recognize and acknowledge that he himself played a critical and central role in the tragedy leading up to his incarceration.

My views that he suffers from a personality dysfunction are based on the early life traumas he experienced, which I think have left some scars on his subsequent personality development and his clinical presentation.

Despite his difficulties as I perceive them I do not believe that Dr. Woolcock represents a risk at this time to his ex-wife or his son, Alex. He has, I think, demonstrated a capacity to adapt to difficult situations and environments. I had been extremely concerned about his ability to cope with prison but as things have transpired he has done this in an apparently most adaptive fashion.

While there is certainly still more anger expressed regarding his wife, this is less intense and more reasoned and rational than it was during the acute phase of the

separation and marital conflict. His development of a second family has also mellowed him to some degree and enabled him to focus more realistically on future issues on contrast to those of the past.

From a psychiatric perspective there are no clinical reasons why Dr. Woolcock could not return to medical practice. He is not mentally ill and to my knowledge there has been no concern regarding his competence as a medical practitioner. I have indicated to him my view that he should not self prescribe medication and that he would benefit from continued psychiatric support.

The Tribunal has given careful consideration to the report of Dr. Westmore and to his oral testimony. The following matters have been noted about his opinions given in evidence.

- \* Dr. Woolcock has a diagnosed personality dysfunction rather than a disorder with a long history of mood disturbance caused by reactive depression. He has a particular vulnerability for further mood disturbance with a predisposition to anger, all the more so if he were intoxicated and using minor tranquillisers.
- \* The practitioner does not accept this diagnosis to be valid in his case. To the extent that he accepts blame for his conduct in the shooting incident he blames himself for not extricating himself from a dysfunctional relationship with his wife.
- \* He does not represent a risk to his ex-wife or his son. His development of a second family has enabled him to focus more realistically on future issues in contrast to those of the past.
- \* He is not mentally ill and. from a psychiatric perspective there are no clinical reasons why he could not return to medical practice. However, he should not self-prescribe and would benefit from continued psychiatric support with either weekly or monthly attendances depending on his needs.

There is a need to monitor his moods and the way he copes with mood fluctuations.

Miss Toner's reports are favourable to the practitioner. These reports were made by her in the course of her official duties in the background of an application by the practitioner to the correction authority to be included in a work release programme. Her first professional consultation with the practitioner was in September 1994, nearly two years after his imprisonment commenced. Since February 1995 she has had more or less weekly consultations with him which have been initiated by him. These are not treatment sessions, they are counselling sessions.

In her updated report dated 13 March 1995 she gave an opinion that there was no indication that Dr. Woolcock represented any risk to the community or to his ex-wife and son (Alexander). She considered him to be a "responsible, high achieving citizen prior to the offence and can be expected to resume a pro social [sic] lifestyle on his release". In cross-examination by counsel for the complainant Mrs. Toner was questioned about opinions expressed by her in her earlier report dated 23 November 1994. In this report she dealt with the subject matter of the offence and the history obtained by her of the marital and financial stress placed on the practitioner preceding the commission of the offence. She considered that on the day of the offence "his usual capacity for self control and stress management was further reduced by the consumption of alcohol, sedatives and antidepressants". When questioned about this opinion she agreed that this was a judgment made by her and further that it was based on an assumption that the practitioner usually had a capacity for self-control. She was asked to read Mrs. Woolcock's statement dated 26 November 1990 from paragraphs 5 to 15 (part of Exhibit B). The Tribunal pauses to note that the allegations made by Mrs. Woolcock in these paragraphs are encapsulated in the particulars set out in support of complaint 2.

Miss Toner agreed with counsel that if the account given by Mrs. Woolcock in these paragraphs was substantially true it would not be correct to conclude that Dr. Woolcock's conduct on 2 March 1990 was uncharacteristic or that he had a usual capacity for self-control.

### **A question of character**

The good character of a person is the sum of those constant qualities of the personality that make and shape the moral discipline within. It is an imperative of any person's good character that he or she will not knowingly and maliciously do harm to another person. This imperative is a basic tenet of the Hippocratic Oath which has guided medical practitioners in understanding and discharging their responsibilities to their patients and the public for over thousand years. This imperative is a basic condition for admission to membership and entitlement to continuing membership in the honourable profession of medicine.

With these concepts of good character in mind the Tribunal has carefully considered the evidence presented and the arguments put forward on the question of proof of complaint 2. The Tribunal is comfortably satisfied that the conduct of the practitioner in the episodes of violence and abuse meted out to his wife in the period 1985-1990, culminating in his conduct which constituted the commission of the odious and life-threatening offence against the person as wife indicates such a deficiency in character as to be properly described as bad character.

The character shown to underlie the practitioner's conduct towards his wife and child is a seriously flawed character. If it be the case that times he had feelings of resentment and anger towards his wife for the position in which he found himself - an unhappy and incompatible marriage - it is self-evident that his response to this situation in causing physical and emotional harm to his wife in

episodes extending over a number of years is incompatible with good character. He is an intelligent man and by his training and experience he should have realised that his violent behaviour during these episodes demonstrated serious aberrant behaviour on his part which would be considered unacceptable by all persons of good character.

It is incompatible with the calling of a medical practitioner that he deliberately and knowingly cause physical and emotional harm to his spouse in retribution or retaliation for a sense of grievance felt towards her for not being a compatible marital partner. The grossly intemperate and violent acts committed by the practitioner towards his wife on the night of 2 March 1990 and which were preceded over the years by episodes of acts of verbal abuse, intimidation by threats of physical harm with the use of firearms and cutting weapons and assaults to the person of his wife are plainly incompatible with the good character required of a medical practitioner whose vocation is or should be to provide medical aid and healing to members of the community.

The question remaining for the Tribunal's determination is whether at the time of the hearing of the complaint the practitioner is not of good character. Where, as here, a finding is made against a practitioner that in the past he was not of good character by reason of proven misconduct the onus is on the practitioner to demonstrate to the Tribunal that since the conduct complained of, which established he was not of good character, he has reformed his character and now is a person of good character and a fit and proper person to practise medicine.

This onus, as has been stated by high authority, is a heavy onus. The Tribunal has given careful consideration to the evidence and the arguments of counsel for the practitioner that Dr. Woolcock can now be accepted as a person of good character. The Tribunal has considered the opinions of his character referees in evidence, the evidence of his good conduct during his present incarceration, the evidence of his



stable and loving relationship with his de facto wife and child and the opinions of the prison psychologist and Dr. Westmore in evidence. Last, but not least, the Tribunal has considered Dr. Woolcock's evidence in relation to his past conduct leading up to his arrest, his conduct leading up to his sentence and his plans for the future upon his release at the expiration of the sentence or release on parole.

On its review of this evidentiary material the Tribunal considers that Dr. Woolcock has failed to satisfy it that he has undergone the necessary reformation of character and is now a person of good character. There is force in the submission of counsel for the complainant that for the last three years by reason of his incarceration Dr. Woolcock has been in an extremely closed and controlled environment and has not been exposed to the stress factors of the kind that led to his previous misconduct. Moreover, it is an environment where drugs and alcohol are not available to him. It is clear from Dr. Westmore's prognosis that Dr. Woolcock is vulnerable to mood disturbance because of the diagnosis of personality dysfunction and there is a present need in his case for continuing psychiatric care and counselling. In the view of the Tribunal it is too soon at this time to be satisfied that he is now a person of good character.

The Tribunal finds complaint 2 proved.

Complaint 3 - a complaint alleging professional misconduct under s37 of the Act.

At the conclusion of the case for the complainant, counsel for the practitioner submitted that on the evidence presented in relation to this complaint charging professional misconduct there was no case to answer. He submitted the evidence fell far short of proving any of the three particulars setting out the misconduct alleged. Moreover, he submitted that proof of the particulars would not establish a level of serious misconduct in the practice of medicine to a threshold of

demonstrating professional misconduct under s37 of the Act. Rather, he submitted proof of the particulars could, at the highest, support a finding of unsatisfactory professional conduct under s36 of the Act which had not been charged in the complaint.

The Tribunal heard submissions from both counsel on the question of whether there was a case to answer. Counsel for the complainant argued that the evidence presented to the Tribunal in support of this complaint could support a finding that the complaint had been proved.

The Tribunal retired to consider the "no case to answer" submission and after carefully considering the evidence relied upon in support of the complaint the Tribunal came to the unanimous conclusion that the evidence presented in the complainant's case failed to establish the particulars of misconduct relied on in support of the complaint. In the course of the hearing the Tribunal announced its finding and determination in relation to this complaint and stated it would publish its reasons when it made its determination of the other two complaints.

The Tribunal will now give its reasons for determining that complaint 3 has not been proved to its comfortable satisfaction.

The evidence in the complainant's case relied upon in proof of this complaint is confined to:

- (a) the evidence of the practitioner's wife, Mrs. Virginia Woolcock;
- (b) the evidence of records kept by officers of the Australian Customs Service recording the practitioner's departures from Australia during the relevant periods; and

- (c) the evidence of Dr Bernard Kelly, registered medical practitioner carrying on practice as a general practitioner.

Before giving a summary of the evidence relied upon for proof of this complaint the Tribunal considers it appropriate to make the observation that it considers the factual allegations set out in the particulars relied upon to prove the complaint of professional misconduct lacked precision and particularity to an extraordinary degree and that the deficiency was not cured by the evidence adduced in the complainant's case. The evidence of Mrs. Virginia Woodcock was relied upon to establish the facts alleged in the particulars of misconduct.

The Tribunal has given careful consideration to her oral testimony and her verified written statements admitted into evidence (part of Exhibit C.) the Tribunal accepted her to be an honest witness doing her best to recollect events which occurred during the period she and the practitioner cohabited as husband and wife and when they had a business relationship in a partnership conducting a medical centre at Penrith. In the conduct of this centre Mrs. Woodcock acted as the centre's receptionist and also had an administrative role in organising the daily patient practice rosters and changes to those rosters whenever a practitioner at the centre was unable to attend a scheduled appointment.

After an analysis of the evidence presented in the complainant's case the Tribunal finds in relation to particular 1 of the complaint:

**Over the period 1985 to 1990 the practitioner administered substantial quantities of prescription drugs to himself, including Normison, Catovit and Rohypnol.**

1. The practitioner administered to himself the prescription drugs Catovit and Normison during the period particularised.

2. The evidence fails to establish that these prescription drugs were self-administered in substantial quantities as alleged in the particular; and further, there is no evidence that the quantities administered exceeded the recommended or normal dosages for the prescription drugs in question.

In relation to particular 2:

**Over the period 1987 to 1990 the practitioner consumed excessive quantities of alcohol on a regular basis with the result that he was often unable to keep appointments with patients at the Penrith Medical Centre.**

1. The evidence establishes a history of excessive drinking of alcohol by the practitioner in the matrimonial home at times associated with episodes of depression suffered by him which resulted in violent and abusive behaviour towards his wife.
2. The evidence does not establish that this history of excessive consumption of alcohol by the practitioner occurred with such regularity that he was often unable to keep appointments with patients at the Penrith Medical Centre as alleged in the particular.
3. The evidence does not establish that the practitioner's business luncheon appointments resulted in him either being **often** late for a scheduled patient consultation or in him **often** failing to attend such a consultation. Moreover, the evidence does not establish that the practitioner drank excessive quantities of alcohol at these luncheons.

In relation to particular 3:

**Over the period 1987 to 1990 the practitioner on numerous occasions went on holidays for lengthy periods without informing the staff at the Penrith Medical Centre or making alternative arrangements for the care of his patients during his absence.**

1. The evidence does not establish that during the period particularised the practitioner went on holidays for lengthy periods.
2. The evidence does not establish the practitioner was absent from practice on holidays without informing staff at the medical centre.
3. The evidence does not establish that the practitioner failed to make alternative arrangements during his absence from practice on holidays.

From its review of the evidence the Tribunal is satisfied that the practitioner travelled overseas for a holiday on one occasion during the period stated. On this occasion the practitioner travelled to Noumea in May 1989 for a three day holiday. Mrs Woolcock gave evidence that the practitioner claimed he was depressed on this occasion and that he needed to have a break from his practice. She had about two days' advance notice of his departure date and in fact she drove him from the home to the airport.

There is evidence from Mrs. Woolcock that the practitioner, on occasions travelled to a farm property at Scone jointly owned by them in the relevant period. On some of these occasions she accompanied him to the farm with their son. On other occasions he either travelled to the farm alone or travelled with their son. She was unable to identify the proportion of occasions the practitioner was at the farm at weekends with the family compared with the number of occasions he went alone on occasions other than weekends. She was not even able to give an estimate of

this proportion. Her evidence fell short of establishing a pattern of regular and/or frequent behaviour on the part of the practitioner in relation to absences from the practice caused by visits to the property at Scone at times when he was rostered to attend patients at the medical centre.

In further written particulars supplied by the complainant's solicitors in correspondence at the request of the practitioner's solicitors "the staff" referred to in this particular were identified as medical practitioners of the centre and "the Administrator of the centre". On the evidence presented in support of the complaint the identity of the administrator of the centre referred to in the further particulars is obscure. The medical administrator during the relevant period was Dr. Woolcock. Mrs. Woolcock performed an administrative role as mentioned earlier in these reasons. Counsel for the complainant was not able to assist the Tribunal in relation to the identity of the particular staff member described as the "Administrator of the centre" in the particulars. Be that as it may, if it be the case that Mrs. Woolcock was the administrator of the centre referred to in the particular then the evidence is that at all times when Dr. Woolcock absented himself from clinical practice to either go overseas or to go to the property at Scone he informed Mrs. Woolcock in advance of his intentions and that she made alternative arrangements for another medical practitioner to attend his listed patients. If, on the other hand, the administrator of the centre referred to in the particular is not Mrs. Woolcock, then the evidence fails to establish who held this position at the relevant time and further, that this person and/or other medical practitioners at the centre were not notified of the intended absences of the practitioner from clinical practice.

It is borne in mind by the Tribunal that the further particulars of the complaint supplied by the complainant in response to a request from the practitioner's solicitors included a concession by the complainant that it was not alleged against

the practitioner that any of his patients were denied medical treatment as a result of the practitioner taking holidays as alleged in the particular.

This aspect of the complaint leads the Tribunal to refer at this point to the evidence of Dr. Bernard Kelly. Dr. Kelly was requested to give an opinion on the question whether he strongly disapproved of the practitioner's conduct and whether, in his opinion, his medical colleagues of good repute and competence would similarly strongly disapprove of the practitioner's conduct if the factual matters alleged against him in the particulars of the complaint be accepted as true. Dr. Kelly gave an opinion that he strongly disapproved of the conduct particularised and further gave the opinion that his medical colleagues would be of a similar opinion.

In view of the Tribunal's findings in relation to the particulars of complaint the foundation for Dr. Kelly's opinion has been removed. Dr. Kelly disapproved of any medical practitioner self-medicating with a drug except in the case of an emergency and strongly disapproved of a medical practitioner regularly self-administering drugs in excess of the normal dosage.

The Tribunal has found that the evidence failed to establish that the practitioner self-administered prescription drugs in excess of the normal or recommended dosages. Dr. Kelly's strong disapproval in relation to this particular therefore lacks the evidentiary base to support it.

The Tribunal notes from the evidence presented in the practitioner's case that results of a survey published in Vol. 162 of the Medical Journal of Australia medical practitioners in New South Wales conducted jointly in 1994 by the Doctors' Health Advisory Service (NSW) and the Epidemiology Branch of the New South Wales Health Department indicated that self-medication of prescription drugs by practitioners was common. A survey conducted in the United Kingdom in 1989 indicated a similar attitude towards self-prescribed medication by U.K.

practitioners. It is apparent to the Tribunal that there is a legitimate concern in the medical profession in New South Wales on the question whether self-prescribed medication, particularly of drugs that affect mental function, is an acceptable practice from the point of the quality of the practitioner's own health care and the quality of patient care.

Be that as it may, no evidence has been presented to the Tribunal that the practice of self-prescribed medication in accordance with recommended or normal dosage is considered by practitioners of good repute and competence to be improper or unethical conduct in the practice of medicine.

Before ending discussion of Dr. Kelly's evidence one further feature of his evidence should be mentioned. It was plain from his comments in relation to the standards of practice required of general practitioners that he disapproved of extended hours group practice clinics (the kind conducted by the practitioner). He also expressed the opinion that it was incumbent on a practitioner who could not keep a scheduled appointment for a consultation with a patient requiring ongoing care because of the acute nature of a medical condition to consult with the practitioner taking over the clinical management of the patient. Dr. Kelly went on to state that although there was no material before him to suggest that any patient of Dr. Woolcock came within that description he assumed that in any patient population of a practice of the kind conducted by Dr. Woolcock there would be patients of that description. He was, accordingly, critical of any rescheduling of a patient of this description without there being prior consultation between the practitioners on the patient history and management.

Dr. Kelly's disapproval deals with the sufficiency or adequacy of "hand-over arrangements" when a patient consultation is rescheduled to another practitioner. The complaint made against Dr. Woolcock alleges that he failed to notify staff or the clinical administrator of his intended absence from practice. It is not a



complaint alleging he failed to make proper arrangements for re-scheduling his patients. Moreover, no evidence was presented that any patient of Dr. Woolcock affected by his inability to keep a scheduled appointment had acute ongoing medical problems such that required direct personal consultation between Dr. Woolcock and any locum and any staff practitioner who may have taken over the care of the patient. As already noted in these reasons, the complainant has conceded that it is not alleged against the practitioner that any patient of his was denied medical treatment in consequence of his absence from practice for whatever reason.

The Tribunal notes that the thrust of Mrs. Woolcock's evidence was that by reason of the practitioner's absence from practice at times when he had scheduled appointments it was onerous for her to discharge her responsibilities as the centre manager in arranging for a locum to provide medical cover.

On the evidence presented to the Tribunal in support of this complaint the Tribunal is unanimously of the view that the charge of professional misconduct has not been proved to its comfortable satisfaction.

### **Determinations**

1. The Tribunal determines that complaint 1 has been proved.
2. The Tribunal determines that complaint 2 has been proved.
3. The Tribunal determines that complaint 3 has not been proved.

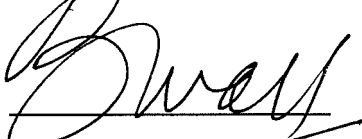
## Conclusion

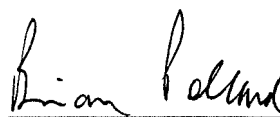
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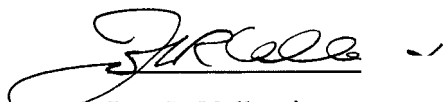
The Tribunal indicated to counsel for the parties that it would publish its determinations and its reasons on a date to be announced and that it would hear submissions from counsel for the parties on the question of appropriate protective orders to make in the light of any proven complaint.

In the light of the Tribunal's findings that complaints I and 2 have been proved the Tribunal has considered appropriate protective orders that could be made in order to protect the public and the profession. For reasons already stated, the Tribunal is not empowered in these proceedings on proof of complaints I and 2 to make an order for either deregistration or suspension of the practitioner.

In the Schedule which follows the Tribunal has set out a tentative form of protective orders it considers appropriate in the circumstances of this case. The Tribunal stresses that it has no concluded views on the final form the protective orders should take and will hear submissions from counsel on the subject matter after the parties and their legal representatives have considered these reasons, the Tribunal's findings and the suggested form of the protective orders in the Schedule.

  
Judge B.C.M. Wall Q.C.

  
Dr. B. Pollard

  
Dr. J. Vallentine

Ms M. Brophy

This is to certify that this page, the preceeding 41 pages and the succeeding three pages of the schedule constitute the Determination and the Reasons for the Decision of the Medical Tribunal in this matter.

Associate to His Honour Judge Wall Q.C

## THE SCHEDULE

### PROTECTIVE ORDERS

The Tribunal makes the following protective orders in relation to the proved complaints 1 and 2.

- (1) The Tribunal reprimands the practitioner.
- (2) The following conditions of practice shall be imposed on Dr. Woolcock's registration as a medical practitioner:
  - 1.0 Dr. Woolcock shall not be entitled to resume private practice unless and until he has completed to the satisfaction of the relevant hospital medical superintendent and the Medical Board twelve months full time employment as a medical officer in a public hospital approved by the Board.
  - 2.0 If and when condition 1 is complied with Dr. Woolcock's entitlement to resume private practice shall be subject to the following further conditions:
    - 2.1 Dr. Woolcock's medical practice shall be in a group practice approved by the Board and shall be supervised by a general practitioner in that practice also approved by the Medical Board. The approved supervisor or any substitute approved by the Board is required to sign an agreement form approved by the Board that provides for the following matters:

- a. that he or she consents to act in the role of supervisor.
  - b. the nature and format of the supervision.
  - c. an agreement that the supervisor will advise the Board in a timely manner if there are concerns held by the supervisor about any aspect of the supervision or Dr. Woolcock's behaviour/practice or non-compliance with these conditions.
- 3.0 Dr. Woolcock shall attend a treating specialist psychiatrist of his own choice, approved by the Board, for regular consultations, at least monthly. The periodicity of the consultation programme otherwise to be determined by the treating psychiatrist who shall take responsibility for the overall management of his psychiatric treatment.
- 3.1 The treating psychiatrist shall notify the Board in a timely manner of any non-compliance by Dr. Woolcock with this order and of any concerns held by the treating psychiatrist about Dr. Woolcock's fitness to practise medicine.
- 4.0 Dr. Woolcock shall not self-prescribe any psychotropic drug and shall not self-medicate with any psychotropic drug except on prescription from his treating psychiatrist.
- 5.0 Dr. Woolcock shall attend upon a Board-nominated psychiatrist on a four monthly basis at times and places determined by the psychiatrist who shall report to the Board in writing the results of these attendances.
- (3) . The Board may review the conditions imposed by the Tribunal in these orders and may in its discretion vary or terminate any of the conditions (other than condition 1) at any time after Dr. Woolcock has completed his first year of private practice.

- (4) The Tribunal's registrar shall supply Dr. Woolcock with a copy of the Tribunal's orders containing these conditions and he shall sign a receipt acknowledging that he has read the orders and accepts his obligations thereunder.
  
- (5) The clinical supervisor, the treating psychiatrist and the Board-appointed psychiatrist shall each be supplied by the Tribunal's registrar with a copy of these orders.

MEDICAL TRIBUNAL OF NEW SOUTH WALES  
MEDICAL PRACTICE ACT 1992

RE JAMES ALEXANDER JUSTIN WOOLCOCK, a registered medical practitioner

Deputy Chairperson:	His Honour Judge B.C.M. Wall, Q.C. Or.
Members	B. Pollard
	Dr. J. Vallentine
	Ms M. Brophy

Wednesday, 11 October, 1995

**PROTECTIVE ORDERS**

On 14 September 1995 the Tribunal published its Reasons for Determinations in an inquiry into three complaints made against the above named practitioner

The Tribunal determined that complaints 1 and 2 were found proved and complaint 3 was not proved.

In a Schedule to its reasons the Tribunal set out a form of proposed protective orders the Tribunal considered appropriate in the light of the proved complaints and in its . Reasons it indicated to Counsel for the parties it would hear submissions on the proposed orders.

The Tribunal has now received submissions from Counsel and has given careful consideration to its findings of fact the diagnosis of personality dysfunction requiring continuing psychiatric monitoring and a particular vulnerability for further mood disturbance with a pre-disposition to anger, the practitioner's present circumstances, his incarceration over the last three years and the principles which guide the Tribunal when determining the appropriate orders to be made, i.e. the protection of the public

and the maintenance of public confidence in the integrity, competence and reputation of the medical profession.

The Tribunal makes the following protective orders in relation to the proved complaints 1 and 2.

1. The Tribunal reprimands the practitioner.
2. The following conditions of practice shall be imposed on Dr. Woolcock's registration as a medical practitioner:
  - 1.0 Dr. Woolcock shall not be entitled to resume private practice unless and until he has completed to the satisfaction of the relevant hospital medical superintendent and the Medical Board twelve months full time employment as a medical officer in a public hospital approved by the Board.

The details of this condition to be:

- 1.1 Dr. Woolcock shall advise the Board in writing of the details of the position at the public hospital at least fourteen days prior to any commencement date.
- 1.2 At this time Dr. Woolcock shall advise the Board in writing that he has informed the hospital authority of all the conditions upon his registration.
- 1.3 Dr. Woolcock shall arrange with his hospital supervisor prior to commencing his employment for the appointment of a senior staff member to be a personal mentor with whom he may consult on a weekly basis to discuss any difficulties, personal or otherwise.

- 1.4 Dr. Woolcock to arrange for his supervisor at the hospital to furnish to the Board at the completion of the twelve months a report based on the standard intern/resident staff appraisal form.
  - 1.5 Dr. Woolcock to be reviewed by the Board at the completion of the twelve months employment and that he submit himself to any medical examination as reasonably requested by the Board.
- 2.0 Dr. Woolcock shall attend a treating specialist psychiatrist of his own choice, approved by the Board, for regular consultations, at least monthly; the periodicity of the consultation programme otherwise to be determined by the treating psychiatrist who shall take responsibility for the overall management of his psychiatric treatment.

The details of this condition to be:

- 2.1 Dr. Woolcock to advise the Board in writing of the name and address of his treating psychiatrist within fourteen days of these orders being made.
  - 2.2 Dr. Woolcock shall authorise the treating psychiatrist to advise the Board of any concerns that the treating psychiatrist may have about Dr. Woolcock's fitness to practise medicine and Dr. Woolcock shall advise the Board in writing within fourteen days of these orders being made that he has done so.
- 3.0 Dr. Woolcock shall not self-prescribe any psychotropic drug and shall not self-medicate with any psychotropic drug except on prescription from his treating psychiatrist.




(We considered whether it might be preferable that Dr. Woolcock not treat himself at all and have a treating GP, but given the evidence perhaps not justified).


- 4.0 Dr. Woolcock shall attend upon a Board-nominated psychiatrist on a four monthly basis at times and places determined by the psychiatrist who shall report to the Board in writing the results of these attendances.
  
3. The Board may review the conditions imposed by the Tribunal in these orders and may in its discretion vary or terminate any of the conditions (other than condition 1) at any time after Dr. Woolcock has completed his first year of private practice.
  
4. The Tribunal's registrar shall supply Dr. Woolcock with a copy of the Tribunal's orders containing these conditions and he shall sign a receipt acknowledging that he has read the orders and accepts his obligations thereunder.
  
5. The clinical supervisors, the treating psychiatrist and the Board-appointed psychiatrist shall each be supplied by the Board with a copy of the Tribunal's reasons decision and orders.
  
- , 6. If and when condition 1.0 under Order 2 is complied with Dr. Woolcock's entitlement to resume private practice shall be subject to the following further condition:
  - 1.0 Dr. Woolcock's medical practice shall be in a group practice approved by the Board and shall be supervised by a general practitioner in that practice also approved by the Board.

The details of this condition to be:


- 1.1 Dr. Woolcock shall advise the Board in writing of the details of the position in private practice at least fourteen days prior to any commencement date,
- 1.2. At tills time Dr. Woolcock shall also advise the Board in writing of the name of his supervisor and:
- i) that the supervisor has agreed to supervise Dr. Woolcock's medical practice, and to provide an annual report in writing on his conduct and standard of practice, and
  - ii) that Dr. Woolcock has authorised the supervisor to advise the Board in a timely manner if there are concerns held by the supervisor about any aspect of the supervision of Dr. Woolcock's behaviour/practice or non-compliance with these conditions.



Judge B.C.M. Wall Q.C.



Dr. B. Pollard



Dr. J. Vallentine



M. Bloddy

