

MEDICAL TRIBUNAL OF NEW SOUTH WALES

IN THE MATTER OF THE MEDICAL PRACTICE ACT, 1992

**AND IN THE MATTER OF AN INQUIRY BY THE MEDICAL TRIBUNAL UNDER
SECTION 51 OF THE SAID ACT INTO A COMPLAINT AGAINST DR. ROBERT
BERNARD HAMPSHIRE.**

Deputy Chairperson: Judge Cooper
Members: Dr. J. Richards
Dr. M. Pasfield
Mr. D. Berry

SYDNEY: /2 December, 1994.

REASONS FOR DECISION

INTRODUCTION

This Tribunal is conducting an inquiry into two complaints laid against the Respondent.

The first alleges that he has been guilty of unsatisfactory professional conduct and of professional misconduct within the meaning of sections 36 and 37 of the Act.

The particulars of this complaint are:

- i Between early November 1993 and a date in May 1994, the Practitioner did not receive treatment from a psychiatrist of his own choosing, whether weekly or fortnightly or at all, in contravention of a condition to which his registration is subject that he do so.
- ii The Practitioner attended upon Dr. J. Phillips in early November 1993 and did not do so again until August 1994, in contravention of a condition to which his registration is subject that he attend upon a psychiatrist nominated by the Medical Board at six monthly intervals so as to enable that psychiatrist to report to the Board.
- iii On or about 5 November 1993 at the Rose Bay Private Hospital, the Practitioner engaged in self-treatment in that he authorised the administration to himself of 300 mgs of pethidine in contravention of a condition to which his registration is subject that the Practitioner refrain from self-treatment and self-prescribing.
- iv On or about 5 November 1993 at the Rose Bay Private Hospital, the Practitioner took possession of and authorised supply of a drug of addiction, to wit Pethidine, when his authority to be in possession of and supply a drug of addiction was withdrawn contrary to Regulation 53 (2C) of the Poisons Regulations made under the Poisons Act 1966.
- v On or about 1 May 1994, the Practitioner engaged in self-treatment in that he administered to himself Pethidine in contravention of a condition to which his registration is subject that the Practitioner refrain from self-treatment and self-prescribing.
- vi Between 30 April 1993 and 8 May 1994, and on other and numerous occasions as stipulated on the seventh page of his letter to the Health Care Complaints

Commission of 24 August 1994, the Practitioner failed to submit to urinalysis in contravention of a condition to which his registration is subject that the Practitioner comply with a Medical Board protocol of thrice weekly urinalysis.

- vii On or about 25 February 1994, the practitioner engaged in self-treatment in that he administered to himself Pethidine in contravention of a condition to which his registration is subject that the Practitioner refrain from self-treatment and self-prescribing.

The second complaint alleges that he suffers from an impairment, the particulars being:

The Practitioner suffers from a physical or mental disorder, namely, addiction to pethidine which is a deleterious drug, which detrimentally affects or is likely to detrimentally affect his physical or mental capacity to practice medicine.

THE INQUIRY OF THE PROFESSIONAL STANDARDS COMMITTEE

To understand the issues in the present inquiry it is necessary to go back to the Inquiry conducted by a Professional Standards Committee in March of 1992 and to the Reasons for Decision of that Committee dated 9 April, 1992 (see Ex. 5).

That Committee was enquiring into a complaint alleging,

- A. that the Respondent had been habitually addicted to a deleterious drug within the meaning of subsection 28(1) (c) of the Medical Practitioners Act 1938 and/or
- B. that he had been guilty of professional misconduct within the meaning of subsection 28(1) (d) of the Act in that he had engaged in improper or unethical conduct in relation to the practice of the medicine.

The particulars alleged, in effect, that he had been improperly self-administering pethidine from December, 1988.

Because of their significance to the present proceedings it is necessary to set out the findings of the committee on the particulars in full. For the sake of convenient reference later in these Reasons, the respective paragraphs of the findings have been numbered by this Tribunal.

Findings of the Committee on the Particulars

1. *The Committee finds that Dr Robert Bernard Hampshire has been addicted to a deleterious drug within the meaning of section 28(1)(c) of the Act. Dr Hampshire admits the particulars in relation to this complaint.*
2. *Dr Hampshire's persistent abuse by the self-administration of pethidine demonstrates many of the classic features of opioid dependence.*
 - (a) *The grossly inappropriate and repeated use of pethidine as a self-treatment of acute anxiety and headaches.*

- (b) *Pattern of increasing use in relation to anxiety and distress in reaction business failures.*
- (c) *The use of pressure and manipulation of medical colleagues to obtain prescriptions for supplies of pethidine.*
- (d) *The exclusive use of one opioid drug as a self-treatment despite an extensive knowledge of the array of treatments available for anxiety, including other non-habit forming medications and non-pharmaceutical treatments.*
- (e) *The increasing use of deception to conceal his pethidine dependence.*
- (f) *The forging of prescriptions for pethidine in the names of an increasing number of medical practitioners, including close colleagues.*
- (g) *The stealing of prescription pads of other medical practitioners, including close colleagues.*
- (h) *The ready and, on occasions, immediate reversion to self-administration after having:*
 - i *voluntarily surrendered his authority to prescribe, possess and administer Schedule 8 drugs on 9 October 1989;*
 - ii *his Schedule 8 authority totally withdrawn on 2 March 1990;*
 - iii *given undertakings to Drs Arnold and Williams of the Medical Board on 4 July 1990.*
- (i) *Repeatedly failing to disclose to his treating and reporting psychiatrist that he continued to use pethidine thereby largely invalidating his treatment in a self-destructive way.*
- (j) *Probably avoiding the use of pethidine in the days before an appointment with his treating psychiatrist as a means of avoiding detection of the "random" urinalysis.*
- (k) *The failure to disclose fully to this Committee at the outset of the hearing, when given the opportunity to do so, the full extent of his abuse of pethidine.*
- (l) *The repeated attempts to minimise his use of an likely effects of pethidine on his mental state and the increasing use of self-illusion denial and rationalisation to deal with his growing opioid dependence.*
- (m) *The inappropriate involvement of his wife and secretarial staff in his procurement of pethidine.*
- (n) *The payment of blackmail to prevent disclosure by a pharmacist to the authorities of his illegal procurement and possession of pethidine.*
- (o) *The inevitable general impairment that results from the addiction to opioids including impairment of clinical care, skill and judgement. Although there is no specific complaint or evidence of the lack of proper care, skill or judgement, there is evidence that Dr Hampshire acted erratically in failing to attend appointments with patients, arriving late or cancelling appointment lists.*

3. *The Committee includes two medical practitioners with many years' experience in the treatment of opioid dependent persons, including medical practitioners. Dr Hampshire*

should be left in no doubt that his behaviour fulfils many of the pathological features of chemically dependent medical practitioners. Despite the fact that the patterns of opioid use was apparently episodic and in response to anxiety, the nature of his opioid seeking behaviour is no less pathological than other high tolerance continuous daily opioid self-administering doctors.

4. *The nature of Dr Hampshire's addiction to pethidine is viewed as an impairment of a psychological nature and that it warrants medical treatment of a psychiatric and drug management kind rather than a punitive response.*
5. *To the extent that the Committee finds that Dr Hampshire's improper and unethical conduct can be understood in terms of and attributed to his addiction to pethidine, then it is prepared to deal with that conduct in terms of impairment requiring effective supervised treatment as a condition of registration.*
6. *The Committee considered making a finding that Dr Hampshire had been guilty of professional misconduct within the meaning of subsection 28(1)(d) of the Act as set out in the alternative complaint. That the Committee makes no finding in relation to the second complaint should not be taken by Dr Hampshire as an exoneration of the second complaint. The Committee views with utmost gravity the particulars in relation to the complaint which are admitted and found proven. If the alternate of the first complaint were not available, the Committee would have had no choice but to find the second complaint proven. The Committee views with utmost gravity the particulars in relation to the complaint which are admitted and found proven. If the alternate of the first complaint were not available, the Committee would have had no choice but to find the second complaint proven. The Committee views with particular concern that Dr Hampshire's conduct included stealing and forgery. It regards as no less irresponsible that undertakings solemnly given to members of the Board were soon broken. The Committee considered carefully the gravity of Dr Hampshire's actions and gave careful thought as to whether the matter ought to have been referred to the Medical Tribunal for suspension or deregistration.*
7. *The Committee, in taking the view that this matter ought to be dealt with in terms of impairment, relies heavily on the quite clear and specific evidence of Dr Jonathan Phillips. He makes a diagnosis of a biological depression responding to antidepressant medication and an anxiety disorder which may be a feature of that depression or may stand separately as a diagnosis requiring different specific treatment. This illness appears to have been precipitated by a long period of stressful and perhaps for Dr Hampshire traumatic incidents in his life concerning his personal business and financial life and which has resulted in his present insolvent financial state and the sale of all of his assets. The Committee accepts that Dr Hampshire was originally given pethidine for treatment of fractures and dislocations following cycling accidents and that he found pethidine relieved his anxiety. It further accepts that Dr Hampshire self-administered pethidine as treatment albeit inappropriately for his anxiety and possibly dysphoria.*
8. *The Committee noted Dr Phillips' evidence that Dr Hampshire had a strong family history of depression. His father suffered severe recurrent depression in the latter years of his life and died in 1991. His older brother requires treatment for depression and a paternal uncle had known bipolar affective illness and ended his life by suicide. Another paternal uncle had severe unipolar depression requiring treatment with ECT. Dr Phillips states that Dr Hampshire revealed "classic" symptoms of a biological depression. The Committee was satisfied on the basis of all the evidence that Dr Hampshire suffered from a biological depression and anxiety.*
9. *Dr Phillips went on to give a very comprehensive plan of future treatment including regular frequent supervision by a psychiatrist, preferably one familiar with issues of drug dependence. He emphasised the need for an active interventionist style of therapy*

with close monitoring of thrice weekly urinalysis. He provided an outline of pharmacological, behavioural, psychological therapy. The Committee therefore was led to hold some confidence that there was an effective treatment that could reduce the risk of resumption of opioid abuse.

10. *The evidence is that whilst Dr Hampshire wrote prescriptions in his own name (and forged others in the names of other doctors), in the names of other persons, that the pethidine obtained by these means was for himself alone. There is no evidence to indicate that he prescribed for other persons who may have obtained pethidine for their use. No other persons appear to have suffered directly because of his prescribing of pethidine. Although the Committee is strongly of the view that the abuse of pethidine inevitably results in impairment of the capacity to practise medicine, there is no evidence of specific detriment to patients.*

THE DETERMINATION OF THE PROFESSIONAL STANDARDS COMMITTEE

The Committee directed that the following conditions be placed on Dr Robert Hampshire's registration.

- (a) That he enter into regular ongoing treatment with a psychiatrist of his own choosing, initially at weekly and later at second weekly intervals at the discretion of the treating psychiatrist.
- (b) That he comply with the Board protocol of thrice weekly urinalysis which will be monitored by the treating psychiatrist or, alternatively, a specialist in drug dependence. The monitoring doctor will report to the Board and the treating doctor will advise of Dr Hampshire's attendance.
- (c) That he attend the Board-nominated psychiatrist at six-monthly intervals who will report to the Board.
- (d) That his right to prescribe, possess or administer Schedule 8 drugs remain withdrawn.
- (e) That he be reviewed by Board Counsellors at three-monthly intervals.
- (f) That he refrain from self-treatment, self-prescribing and treatment of his family.
- (g) That he work in a group practice setting, approved by the Board, and that his associates be notified of his conditions of registration and be requested that the Board be notified by his associates if they have cause for concern for his patient care.
- (h) That he join and actively participate in psychotherapy supervision. This may include supervision which is a part of the Masters in Psychotherapy course work, the cognitive behaviour therapy interest group or other ongoing regular collegiate supervision.
- (i) That a copy of this determination be forwarded to Dr Hampshire, the Complaints Unit, the Pharmaceutical Services Section of the NSW Department of Health, the reporting and treating doctors and such other bodies or persons as the Board may determine.
- (j) These conditions may be varied by the New South Wales Medical Board after the period of two years.

FROM APRIL 1992 TO 4 NOVEMBER, 1993

It is now proposed to look at the events following upon this determination in chronological sequence.

Pursuant to condition (e), the Respondent was interviewed by Assessors appointed by the Board on 1st July, 1992. He told them that his financial circumstances had significantly improved and that it was no longer seen by him as a major stress. His practice was progressing satisfactorily at the equivalent of 5 half days per week and he attended teaching sessions and Grand Rounds at Westmead Hospital. He reported he was attending Drs Gertler and Jurd on a monthly basis and having urinalysis three times a week. He had then completed his first exams in the Masters in the Psychotherapy course at the University of N.S.W..

He was again interviewed on 19 November, 1992 when the terms of the report were similar to the former. At that stage he remained involved in sport, having recently resumed cycle racing after a break and he had also taken up sculling. He was much less depressed than he had been at the previous interview and said his attacks of anxiety had ceased. The Board's representatives were satisfied that he was continuing to progress.

When reviewed on 25 February, 1993, he reported that things were going well drugwise with no further episodes of improper drug use. He did comment on a recent episode of soft tissue elbow injury for which he had been treated by his doctor with a local steroid injection and panadeine forte but this had been a transient problem. He continued seeing Dr. Gertler and also with his thrice-weekly urinalysis. He was spending more time in his private psychiatric practice. He had passed his first year in his Masters course and had just begun the second year. The Assessors were then satisfied with his progress.

He was next reviewed on 20 May, 1993 when he reported that many financial issues had been resolved although they involved a commitment of a significant proportion of his professional earnings. His practice was increasing and was now full time most days. He had been maintaining contact with Westmead Hospital and felt he was gradually building a role there. His physical health was good. He was not riding but was actively rowing. He continued to receive treatment from Dr Gertler and also had been having Eye Movement Desensitisation treatment from a colleague which he found helpful. The Assessors determined that his progress was satisfactory.

He was next seen on 18 August, 1993 when he reported that he felt things continued to go well and that he had recently won a sculling championship which enabled him to travel

overseas for a World Championship. His practice continued to increase and that he was taking many referrals, particularly patients referred for Rapid Eye Desensitisation movement. He was maintaining contact with Westmead Hospital and was involved in a number of teaching activities particularly in the field of cognitive behavioural therapy. At that stage he was due to see the Board nominated psychiatrist during the next month. He also reported that he continues to see Dr Gertler and Dr Jurd on a regular basis and also continues with thrice weekly urinalysis. He reported that he was seeing a colleague, Dr Michael Armstrong on a weekly basis for discussion of his cases and supervision.

Because of its significance in relation to other particulars of misconduct alleged, it will be noted that the report states that he was seeing Dr Armstrong in August 1993, not for treatment but for discussion of his cases and supervision.

Pursuant to condition (a), the Respondent attended his treating Psychiatrist, Dr Gertler in 1992 on 13 May, 26 May, 9 June, 30 June, 18 August 22 September. And in 1993 on 16 February, 6 April, 18 May, 3 August, 7 September and 26 October

He failed to attend an appointment made for the 16 December and did not see him thereafter. (see Ex. 7)

Pursuant to condition (c) he attended the Board's nominated Psychiatrist, Dr Jonathan Phillips on 8 September, 1992 and 10 March, 1993 On the latter occasion, he reported that the Respondent was coping reasonably well at the current time. He believed that the Respondent should continue to consult Dr Gertler and Jurd and have urine drug testing on a twice weekly basis.

5 NOVEMBER, 1993.

It is upon this background that one now comes to the events of 5 November, 1993.

At 1.33 am he telephoned the Hotel Medical Service at Woollahra on his mobile phone. At 1.54 am he telephoned Dr I. Davis on his mobile phone.

At 2.00 am he telephoned the Rose Bay Private Hospital on his mobile phone and spoke to Sister Morgan. He told her that he had been riding his bike, had fallen off and thought he had dislocated his shoulder. He asked if he could come in and get something for pain. When sister Morgan suggested he might go to casualty where they could X-ray it, he said he

did not want to do that because he did not want to be sitting around for hours. He told her that he was just outside the hospital. Arrangements were made to open the hospital door for him.

Sister Morgan said that she observed that the Respondent was wearing jeans with a top and his eyes were bloodshot. He removed the top and showed her his right shoulder which appeared to be sitting further forward than normal as if it may have been dislocated. The skin around the shoulder was reddened but intact. There were no cuts or grazes on the shoulder. She noticed some old suture scars around the shoulder and in response to a query concerning them, the Respondent replied that he had a Putti-plat- surgery that was supposed to correct recurrent dislocation.

In response to her request as to what he wanted for the pain, he said that he thought that he needed some pethidine. Sister Morgan could not give it to him without a written authority. She asked if he was prepared to write a medication chart himself and he agreed to do so. He wrote out a prescription for himself for 200 mgs saying that that 100 mgs was not sufficient. Sister Morgan then administered the injection of 200 mgs into the Respondent's left deltoid muscle. After this he requested a further ampoule of 100 mgs to take with him. This was duly given to him.

Sister Morgan was concerned as to how the Respondent was to get home and he said that he would walk home. This was after he had asked a further nurse to ring a taxi. She walked the Respondent to the door and led him out. She heard a car start up directly outside the hospital but could not see it because of an intervening wall.

Nurse Collian who was also on duty at the Hospital confirms the statement of Sister Morgan and also adds that initially he told her that his wife was waiting for him outside in the car. Then he asked her to call a taxi for her and then said "No, no, no, it's OK, I don't need a taxi."

This evidence, which is not in issue, satisfies this Tribunal comfortably on the balance of probabilities that at that time, in breach of condition (d) he prescribed and possessed a Schedule 8 drug, and further, that in breach of condition (f), he indulged in self-treatment and self-prescribing. The possession and authorising of the pethidine, when his authority to be in

possession of and supply a drug of addiction was withdrawn was contrary to regulation 53 (2C) of the Poisons Regulations made under the Poisons Act.

At 7.45 am, and again at 8.23 am he telephoned Dr M. Armstrong.

At about 9.00 am, the Respondent presented himself at the surgery of Dr Jonathan Phillips, the doctor nominated by the Board, to supervise the Respondent. In his report of 19 November, 1993 Dr Phillip says of the Respondent...

"He was wearing his right arm in a sling, blood was oozing at the right shoulder and he had extensive grazing involving his forehead and cheek on the right. He was shaken and upset."

This description varies markedly from the description given by the nursing staff at Rose Bay Hospital of the Respondent's condition at 2.00 am when there was no visible sign of injury on the Respondent's face or chest. The only sign was redness over the right shoulder which then appeared dislocated. Dr Phillips goes on to say..

"He explained that he had fallen from his push bike at approximately 8.00 pm on 4 November, 1993. He thought he had dislocated his shoulder but was able to realign the joint almost immediately".

This history does not completely line up with the evidence of the nurses at the Rose Bay Hospital where, in the opinion of Sister Morgan, a sign of dislocation was still present.

The report continues:

"He contacted his general practitioner but the doctor was in hospital. (This has been verified) He then spoke with Dr W. Roney, surgeon, who I understand had treated him in the past. He put himself to bed after taking Rohipnol. (1 1/2 tablets) He could not sleep and had a scotch and water at midnight. He said the pain was severe at the time and he travelled to Rose Bay Private Hospital where he was administered pethidine. (100 mgs IMI) He then returned home and slept until the morning. (I do not know who prescribed the use of pethidine)"

It will be noted that the Respondent was less than frank with Dr Phillips. He did not tell Dr Phillips that he had prescribed the pethidine. He told Dr Phillips that 100 mgs was administered at the hospital whereas in fact 200 mgs were administered; and he did not tell Dr Phillips that he had taken an ampoule of 100 mgs away with him.

Quite understandably Dr Phillips reported...

"It is always worrying when a previously addicted doctor requests, or is administered his drug or addiction. The risk of further use is then raised substantially."

At about 10.00 am the Respondent attended the surgery of Dr Glover at Potts Point. At that stage, he looked distressed and appeared to be in pain. He had a very dirty blood stained shirt on. This description is consistent with that of Dr Phillips. He told her that he had fallen from his bicycle the previous night and dislocated his shoulder, that he was in hospital last night and had the shoulder reduced with valium.

Again the Respondent was less than frank with Dr Glover when he said that the shoulder had been reduced with valium. Dr Glover examined the Respondent and found that he had grazes and lacerations on his right arm, shoulder and back which were consistent from a fall from a bicycle. She changed the dressings on the grazes and lacerations.

It will be noted that none of these grazes or lacerations were seen by the nursing staff at Rose Bay Private Hospital some 8 hours beforehand even though the fall from the bicycle said to have caused them is claimed by the Respondent to have taken place fourteen hours beforehand.

She then administered a intramuscular injection of 100 mgs of pethidine.

At about 11.00 am the Respondent attended at the Rose Bay Private Hospital where he was seen by Mr Pearson, its Director of Nursing. Mr Pearson describes the Respondent as wearing a white shirt that was very crumpled and extremely dirty with dark marks over its front. He was unshaven, his hair appeared to be uncombed and his right arm was in a sling. He generally looked very dishevelled and his eyes appeared to be very glassy and vacant. In his opinion, the Respondent was then under the effects of some substance. The Respondent spoke to Mr Pearson, told him that he had just seen a patient in the hospital and gave him an update on that patient's progress.

The conduct of the Respondent in attending on a consultation with a patient when within the preceding nine hours he had been injected with at least 300 mgs. of pethidine is conduct which, to put it mildly, is not in the best interests of the Respondent's patient.

Some time that morning, the Respondent attended at the surgery of Dr J. Davis of Double Bay with a history of having fallen off his bicycle and sustaining a dislocated shoulder and multiple laceration. At that stage, Dr Davis found the Respondent's shoulder back in place but the Respondent was in severe pain. The Respondent did not mention any previous

treatment in respect of this injury and, on this basis, Dr Davis decided that the appropriate treatment was a pethidine injection and so administered 100 mgs IMI. Here again the Respondent showed a lack of openness with his treating doctor which led that doctor to give inappropriate treatment.

That same afternoon, the Respondent returned to Dr Davis's practice where he consulted Dr Church. Dr Church injected a further 100 mgs of pethidine IMI.

Between 5.30 and 5.38 pm, the Respondent telephoned Dr Glover on 4 occasions in 7 minutes. She strongly advised and counselled him concerning the use of pethidine and drugs of addiction and declined to provide him with any more.

6 NOVEMBER, 1993 TO 24 FEBRUARY, 1994.

Between 22 and 30 December, 1993 inclusive, the Respondent failed to attend for urinalysis. Between 1 and 6 January, 1994 he again failed to attend for urinalysis.

This leads us to the events of the 25 February, 1994.

25 FEBRUARY, 1994.

Between about 8.00 and 9.00 pm the Respondent telephoned Dr J Davis complaining that he had dislocated his shoulder and was in pain. Dr Davis attended the Respondent's home. He gave him a history of falling off his bike and dislocating his shoulder. Examination of the Respondent revealed abrasions all over the right side of the face and grazes and bruising on the legs. He also had a dislocated shoulder which was still dislocated at the time of examination. The Respondent appeared to be in severe pain. Dr Davis administered 50 mgs of pethidine and 10 mgs of valium intravenously. The Respondent then lay on a kitchen table where Dr Davis, with difficulty, manipulated the shoulder back into place. The Respondent felt much better then but was still in pain. Before leaving, Dr Davis gave the Respondent a pethidine ampoule of 100 mgs, a syringe and two needles to administer for pain during the night. The Respondent's possession and self-administering of this ampoule of pethidine was in breach of condition (d).

26 FEBRUARY, 1994 TO 30 APRIL, 1994.

Between 25 February and 2 March and again between 8 March and 15 March, the Respondent failed to attend for urinalysis.

30 APRIL/1 MAY, 1994.

This leads to the events of the night 30 April/1 May, 1994.

On that night, Dr Blainey was working for the Eastern Suburbs Medical Service, and his duties involved taking telephone calls on a mobile phone regarding persons who have telephoned the Sectel service seeking medical assistance.

At about 11.00 pm he received a phone call asking him to attend the Respondent. He attended the Respondent's home at about 11.30 pm. The Respondent greeted him wearing a pair of shorts and a T-shirt and holding an ice pack to his left hip. The Respondent told Dr Blainey that he had been at his daughter's birthday party at an ice skating rink and fell over on the ice and hurt his hip.

On examination he found a swollen and reddened area laterally over the left hip region. His initial impression was the swelling and redness was the result of recent injury but, in retrospect, he considered it equally liable that the area might have been an old injury reddened by the use of ice. The Respondent also complained of injury of the right knee which did show obvious swelling over the knee cap, consistent with a pre-patella bursitis. Further examination indicated reasonably free movement of the hip and patella and therefore no sign of fracture.

The Respondent did ask for something to stop the pain so that he would not be awake all night. Dr Blainey gained the impression that the Respondent wanted something strong for his pain so that he could sleep. He then told the Respondent that he did not have any pethidine in his bag and that the only thing he could do was to give him a prescription if he could have someone pick it up. Dr Blainey commenced to write the prescription, and after he had written "pethidine 100 mgs", he suggested that 5 might be easier for the chemist because pethidine comes in packs of 5. Dr Hampshire nodded and said 5 would be fine. Dr Blainey completed the prescription for 5 ampoules of pethidine and gave it to him together with his mobile phone number, in case there was any problem with the chemist. He offered to return and administer the injection, but that offer was declined by the Respondent. He then gave the Respondent, one ampoule of Maxalon and 2 syringes with needles.

Shortly after midnight, the Respondent attended at Sharpe's Pharmacy, which had just closed, and encountered Mr Shepherd, a security officer outside, with whom he had an

exchange of words. The Respondent was demanding to go in and speak to the Pharmacist to get a prescription made out and Mr Shepherd was telling him, "just fuck off".

Mr Shepherd formed the view that the Respondent was affected by some substance. He appeared to be hyperactive in that his speech was slightly disjointed. He was jumpy, anxious and agitated. Of course, these signs could be quite consistent with the Respondent being totally frustrated at being unable to get his prescription made up. Ultimately the Respondent was allowed into the pharmacy and, after checking with Dr Blainey on his mobile phone, the 5 ampoules of pethidine were handed over to the Respondent. Once more, the Respondent was in breach of condition (d).

1 MAY, 1994 TO THE PRESENT.

Between 30 April and 8 May, 1994 and again between 2 July 1994 to 10 July, 1994, the Respondent failed to attend for urinalysis.

Pursuant to condition (c) the Respondent should have attended upon Dr Phillips on 5 May, 1994. He did not attend on him until 8 August, 1994.

Dr Phillips reported to the Medical Board on 29 August, 1994, regarding the review of 8 August, 1994. He said that the Respondent had explained that he had been overseas at various times, thus making it difficult for him to attend earlier. The doctor states, -

"He pointed out that some of the information given to me previously in relation to the November, 1993 accident had not been correct in its entirety. It appears that he had used 200 mgs of pethidine at the time, rather than 100 mgs as mentioned previously."

Even this revised statement, whilst closer to the whole truth is still not the whole truth. It omits mention of the fact that he took away an ampoule of 100 mgs from the hospital. He goes on to say, -

"In either June or July, 1994, Dr Hampshire suffered a fall whilst ice skating with his daughter. He said that he developed severe bruising and thought at the time that he might have haematoma of his left hip and knee, particularly as he had been taking aspirin. He remained in pain and sought examination by Dr C. Blainey, general practitioner, at approximately 10.00 pm on the night following the accident and then by Dr D Fox, general practitioner who administered 100 mgs of pethidine. He stated that he only had pethidine on that occasion and denied specifically any further usage."

This incident clearly refers to the events of 30 April/1May 1994. Leaving aside the error as to dates, which is probably an honest mistake, there is a failure on the part of the Respondent to disclose the fact that he obtained from Dr Blainey a prescription for five 100 mg

ampoules of pethidine and that he took that pethidine into his possession for self administration.

On the basis of this history, Dr Phillips then described him as "a physician at risk".

CORRESPONDENCE BETWEEN THE COMPLAINANT AND THE RESPONDENT.

By July, 1994, the Health Care Complaints Commission had received information concerning the foregoing breaches of the conditions of registration and wrote to the Respondent on 21st idem. The relevant parts of the letter are as follows:-

" I advise that the Complaints Unit has received complaints concerning possible breaches of the conditions to which your registration as a medical practitioner is subject to, following directions by a Professional Standards Committee on 9 April 1992. As from 1 July 1994, the Complaints Unit has been replaced by the Health Care Complaints Commission ("the Commission") and accordingly, the Commission is now investigating the relevant complaints.

Two of the complaints have been made by the Pharmaceutical Services Section of the N.S.W. health Department ("the PSS") and relate to the alleged obtaining of pethidine by you. The first complaint alleges that on 5 November 1993 you attended the Rose Bay Private Hospital and authorised the administration to yourself of 200 mgs of Pethidine. It is further alleged that you also took possession of a further 100 mg ampoule of pethidine prior to leaving the hospital. I enclose herewith the following documents in relation to this complaint:

- i Handwritten statement of Nurse Coralie Morgan dated 8 November 1993.
- ii Handwritten statement of Nurse Nachele Collian dated 8 November 1993.
- iii Copy of medication chart in the name of Robert Hampshire.
- iv Copy of page from Register of Drugs of Addiction from Rose Bay Private Hospital.

The second complaint received from the PSS related to the alleged receipt by you of a prescription for five 100 mgs ampoules of pethidine on 30 April 1994 from Dr Christopher Blainey and the subsequent obtaining of possession by you of five (5) pethidine ampoules from the dispensing of such prescription at "Sharpe's Pharmacy" on 1 May 1994. I enclose herewith a copy of the relevant prescription.

I have also received advice from the N.S.W. Medical Board which indicates that:

- i Between 30 April 1994 and 8 May inclusive you failed to submit to urinalysis.
- ii Since 26 October 1993, you have failed to receive any treatment from your treating psychiatrist, Dr Robert Gertler.
- iii Since 5 November 1993, you have not attended upon the Medical Board's nominated psychiatrist, Dr Jonathan Phillips.

I would be grateful if you would provide a response to the above complaints. As part of your response, I would ask that you address the following issues:

1. *Whether you authorised administration to yourself of 200 mgs of pethidine and obtained possession of a further 100 mg ampoule of pethidine from the Rose Bay Private Hospital on or about 5 November 1993 as alleged? If so, what were the circumstances in which you authorised administration and obtained possession of the relevant pethidine on 5 November 1993?*
2. *Whether you obtained the enclosed prescription from Dr Christopher Blainey on 30 April 1994 as alleged and subsequently obtained possession of five (5) 100 mg ampoules of pethidine from the Sharpe's Pharmacy on 1 May 1994? If so, what were the circumstances in which you sought such prescription and how was the relevant pethidine administered?*
3. *Whether you have obtained possession of and/or been administered pethidine or any other narcotic agent since 9 April 1992. If so, please advise precisely when this occurred in each instance and what were the circumstances on each occasion in which you obtained possession of and/or were administered such substance/s?*
4. *What were the circumstances in which you failed to submit to urinalysis between 30 April 1994 and 8 May 1994 inclusive?*
5. *What were the circumstances of you ceasing treatment with Dr Robert Gertler from about 26 October 1993.*
6. *Have you been receiving ongoing treatment from any other psychiatrist? If so, please identify the relevant psychiatrist, the frequency of the treatment and the period during which you have been receiving such treatment.*
7. *Why have you failed to consult Dr Jonathan Phillips since 5 November 1993 as alleged?*

Please do not confine yourself to the above issues but include any other information which you consider may be relevant to my investigation of this complaint.

In view of the serious nature of this matter, I would request that you provide me with your response within 21 days of the date hereof. I enclose herewith for your assistance, a pamphlet entitled "What happens when a complaint is made against you or your organisation".

If you have any enquiries, please do not hesitate to contact Mr David Harris at the Commission of 21907426."

On 5 August, 1994 a further letter was sent to the Respondent's solicitor -

" I refer to my letter addressed to Dr Hampshire dated 21 July 1994, a copy of which was forwarded to you by facsimile on 1 August 1994, and to your letter of 2 August 1994. As requested, I am agreeable to allow your client to 22 August 1994 to respond to the complaints in this matter.

I advise that I have now had the opportunity to peruse urinalysis test reports concerning your client for the period 1 November 1993 to 13 July 1994 which have been forwarded to me by the N.S.W. Medical Board. As you will be aware, your client's registration is subject to a number of conditions including a condition "that he comply with the Board protocol of thrice weekly urinalysis".

My perusal of the relevant urinalysis test reports received from the Medical Board appears to indicate that your client failed to submit to urinalysis during the following periods:-

- i* 22 December 1993 to 30 December 1993 inclusive.
- ii* 1 January 1994 to 6 January 1994 inclusive.
- iii* 25 January 1994 to 6 February 1994 inclusive
- iv* 24 February 1994 to 2 March 1994 inclusive.
- v* 8 March 1994 to 15 March 1994 inclusive.
- vi* 30 April 1994 to 8 May 1994 inclusive; and
- vii* 2 July 1994 to 10 July 1994 inclusive.

Further, it appears your client only submitted to urinalysis on two (2) occasions during the following weeks:-

- (a)* week commencing 21 February 1994;
- (b)* week commencing 28 March 1994;
- (c)* week commencing 18 April 1994;
- (d)* week commencing 25 April 1994;
- (e)* week commencing 23 May 1994;
- (f)* week commencing 30 May 1994;
- (g)* week commencing 13 June 1994;
- (h)* week commencing 27 June 1994.

I would be grateful if as part of his response to the complaints outlined in my letter of 21 July 1994, your client would also advise me of the circumstances in which he failed to submit to urinalysis during the periods specified in (i) to (vii) above, together with the circumstances in which he apparently only submitted to urinalysis on two occasions during the weeks listed in (a) to (h) above.

If you require any further information, please do not hesitate to contact Mr David Harris at the Commission on 219 7426."

To place this correspondence into context it needs to be borne in mind that under section 40 of the Health Care Complaints Act, 1993, if, at the end of the investigation of a Complaint against a Practitioner, the Commission proposes to prosecute the Complaint as a Complainant before a disciplinary body, it must first inform the Practitioner of the substance for the grounds of its proposed action and give him or her an opportunity to make submissions. It was pursuant to this obligation that the above two letters were sent. Under S.99 of the same Act, a person who furnishes the Commission with information for the purposes of the Act, knowing that it is false or misleading in a material particular, is guilty of an offence.

The Respondent replied by letter dated 24 August, 1994, the relevant parts of which are as follows:-

- "1. I did authorise the administration of pethidine as described by the nursing staff at Rose Bay Private Hospital.*

The circumstances surrounding that administration were that I fell from my bicycle at around dusk on the 4th November, 1993 whilst training with my club. I fell on my right side suffering a sub-luxation of the right acromioclavicular joint.

I also may have partially or briefly dislocated my right shoulder, that shoulder had been previously surgically repaired with a Putti-platt operative procedure following repeated dislocations in the 1970's and 1980's from rugby and surfing activities.

I had not dislocated it since surgery, although I have had numerous falls from my bicycle since. I also suffered superficial abrasions of my right shoulder and grazed my face.

I went home, took analgesics and went to bed hoping to overcome the severe pain with bed rest and sleep.

I took aspirin and later a Doloxine Co tablet and later still some whiskey as the pain did not diminish and later still I took a sleeping tablet. This would have been a Benzodiazepine, I presume Normison.

My GP was himself an in-patient of Rose Bay Private Hospital on that date and unable to treat me (this was verified by Dr Jonathan Phillips).

I rang a surgical colleague, Dr William Roney who had treated me previously as an in-patient at Rose Bay Private Hospital and was aware of my past medical history. He did not have a medical bag and suggested I go to casualty as I was in so much pain. I was reluctant to go to casualty for a number of reasons, the main one being that I did not wish to deal with medical staff at a teaching hospital casualty department who may display wariness due to my past history of pethidine use. Rose Bay Private Hospital was discussed as an alternative. I rang Rose Bay Private Hospital from my car phone on the way there, a ten minute drive.

I requested a dosage that I thought would adequately deal with the pain, I was bearing in mind my size and past history use of the drug. Regarding requesting another ampoule in case I needed it later on during the night, I can't really recall that. I presumably did so some minutes after I had been injected with pethidine.

I do not believe I would have used it as I do not have any syringes at home. I presume I did not request syringes from the hospital. Previous antecedents to my pethidine use had been Benzodiazepines and pethidine itself. For that reason I do not keep Benzodiazepines in the house now.

My use of pethidine in the past was always late at night when in pain following surgery, multiple fractures or dislocations (some fourteen (14) in a three (3) year period) I had from sporting accidents, compounded by the anxiety and panic attacks I was experiencing at that time in my life due to my enormous financial difficulties.

By the time I felt I could no longer endure the pain on the night of the 4th November, it was late into the evening and I was becoming increasingly anxious that I would seek pain relief in a more maladaptive way. Hence, I chose to go for help at the Rose Bay Private Hospital.

It was in the context of pain, an unsuccessful attempt at sedation using a Benzodiazepine and mounting anxiety that I elected to have the treatment that I did.

The following morning I went to the rooms of Dr Phillips and discussed the matter with him.

I saw Dr Stephen Jurd, Director of the Drug & Alcohol Unit at Royal North Shore Hospital, who I also see regularly, and talked to him as well about the matter.

From memory, I also discussed this with Dr Tony Williams who chaired the Medical Board Sub-Committee which interviews me on three monthly intervals.

It had been the first time I had taken pethidine in twenty-one months and I was pleased that it gave me no further wish to use it except for the severe pain of that night."

It will be noted that the the statement in this last sentence "I ... was pleased that it gave me no further wish to use it except for the severe pain of that night" is factually incorrect. In fact he sought and obtained further pethidine injections from Drs Glover, Davis and Church. Furthermore, his statement "I chose to go for help at the Rose Bay Private Hospital" must be considered in the light of the fact that that Hospital had no medical practitioner on duty at that hour of the morning. Consequently, the only persons there who would be able to help him were members of the nursing staff who would not have the power to prescribe a Schedule 8 drug.

In paragraph 2 of his letter the Respondent says -

"2.. I did obtain the enclosed prescription from Dr Christopher Blainey on the 30th April, 1994. It arose in the context of an injury I sustained late in the afternoon of that day when I took my daughter and five (5) of her friends ice-skating for a birthday celebration.

During the course of the afternoon I fell over on a number of occasions, the last time suffering a heavy fall. I sustained a haematoma injury to my right knee which swelled up that afternoon and particularly that evening. I also sustained swelling and bruising to my left hip which also swelled up during the evening with a haematoma over the left hip laterally. .

In much the same way as I tried to deal with the pain of the injuries back in November, 1993, I was determined to deal with this pain in a similar way.

As the evening went on the pain became worse, but I continued to manage it by taking aspirin and a glass of wine. However, by mid evening, approximately 10.00 pm my hip was swelling even further, as was my knee and the pain became intolerable.

I was unable to see my GP as he, himself, was in hospital at that time and therefore, rang the Eastern Suburbs Medical Service and requested a home visit.

I was seen by Dr Blainey around 11.00 pm that night. He examined me and offered to give me narcotic pain relief, which I was sorely in need of. He soon realised he didn't have any pethidine left in his bag to give me an injection immediately and said that he would write me a script which I could then self-administer. I didn't tell him of my restrictions in regard to pethidine use partly, I suspect, in fear that he would then not offer me any pain relief and I would be in more pain and more difficulty later in the night. I allowed him to write the script and then rang a colleague of mine, Dr David Fox, who drove me to the late night pharmacy he knew. It was closing as we arrived and the script was filled.

Dr Fox then drove me home and re-examined me and administered the injection of pethidine. He kept the remainder of the box of pethidine. Next morning he rang me and I did not require any further pain relief. I saw Dr Brett Courtney, Orthopaedic Surgeon, in consultation on the 2nd May, 1994.

I also sought a second opinion from an Orthopaedic Surgeon, Dr P Gray of Lane Cove, on the 26th May, 1994. He advised conservative management and, in the three (3) months since, it has reduced in size and become pain free. I also showed the bruise on my hip to Dr Michael Armstrong when I next saw him and told him of the events of the 30th April."

It will be noted that the Respondent says that Dr David Fox drove him to the late night pharmacy, then drove him home, re-examined him and administered the injection and kept the remainder of the box of pethidine. If Dr David Fox had driven him to the pharmacy, one would have expected that doctor and not the Respondent to have been the one who had argued with the security guard, Mr Shepherd, and then entered the pharmacy and requested the prescription to be dispensed. The unsworn and uncorroborated statement that he was accompanied by Dr David Fox at the time, and that David Fox administered the pethidine and kept the remainder, cannot be accepted.

The statement that he saw Dr Courtney in consultation on 2 May, 1994 is corroborated by a report from that doctor, exhibit 10.

Paragraph 3 of his letter, commences:-

"3. *In answer to your question 3, I suggest, with respect, that the submissions I have made in 1 and 2 above answer question 3."*

It will be noted that question 3 in the Complainant's letter asks:

Whether you have obtained possession of and/or been administered pethidine or any other narcotic agent since 9 April 1992. If so, please advise precisely when this occurred in each instance and what were the circumstances on each occasion in which you obtained possession of and/or were administered such substance/s?

The Respondent failed to give a complete answer and in particular failed to disclose all of the pethidine received by him on 5 November, 1993 and also the administration of pethidine IMI in February, 1994.

Paragraph 3 of the Respondent's letter appears to answer questions 3, 4 & 5 in the Complaint Commission's letter of 21st July, 1994.

In relation to the incident of the night of 30 April/1 May 1994 and of the following week, the Respondent wrote:-

" *I think this was partly because Dr Blainey didn't have any pethidine in his bag and had to write me a script; and this writing of the script in my name agitated me to a great degree. I am not completely sure, but I may have contravened some directive given to me by the Board in the past. I knew I was able to be administered narcotics in the event of an injury, but was unsure about having a script written in my name. This agitated me greatly, even though the medication was administered by Dr Fox.*

I was stressed and in some pain and without proper regard, I accept there were certain requirements, and I left for Adelaide.

I cancelled my rooms for much of the week. I rested up at my colleague's home, Dr Brodie Knight, in Adelaide.

The Australian Amateur Cycling Track Championships were on in Adelaide at the time and I stayed there for a few days resting and training. I spent much of my time talking to the Knights about my dilemma. They are fully conversant with my past medical history. Dr Brodie Knight was my best man and long time friend and his wife, Dr Karen Simmer, is also a long standing friend.

The description of the trip to Adelaide is shown to be untrue by the Health Insurance Commission records which have been tendered in evidence. These reveal that the Respondent made claims on that Commission that he provided the following services:-

on 30 April, a 45-75 minute consultation for a patient, whose address was at Maroubra.

On 2 May he provided a 30-45 minute consultation for a patient who lives at Artarmon plus a 45-75 minute consultation for a patient living at Maroubra, plus a consultation greater than 75 minutes for a patient living in the North Sydney area.

On 3 May, 1994 he provided a consultation of longer than 75 minutes for a patient living at Sylvania Waters and a further consultation of between 45 and 75 minutes for a patient living at Paddington.

On 4 May, 1994 he saw 2 patients, one for between 30 - 45 minutes who lived at Artarmon and another of 45-75 minutes for a patient living at Maroubra.

On 5 May, he saw a patient between 30-45 minutes who lived at Artarmon

On 6 May, he saw 4 patients who lived respectively at Maroubra, Bowral, Harboard and Balmain. Three of those patients were seen for between 45-75 minutes and one for a period in excess of 75 minutes.

On 7 May, he saw one patient who lived at Artarmon for between 30 and 45 minutes.

The Respondent's letter continues:

" I have been seeing a Dr Robert Gertler for some time.

I had originally chosen to see him as I had greatly admired him over the years. However, towards the end of 1993 my therapeutic beliefs were based around cognitive behavioural techniques and particularly the use of a new technique called Rapid Eye Movement Desensitisation and Reprocessing. The new technique is practised by Dr Gertler, who I felt was really concerned with the monitoring of my mood states.

There is a strong family history of Major Effective Disorder in my family on the paternal side and amongst my siblings. Effective Disorder had undoubtedly been a further contributing factor to my pethidine use. However, I had been increasingly troubled by Post Traumatic Stress Disorder type symptoms that I was suffering from in response to not only the period of use of Pethidine, but also the period after that of the Board appearances, etc.

I had been exhibiting avoidant behaviour, in intrusive thoughts and flashback phenomena regarding that period in my life which were causing considerable anxiety and low grade depression.

I saw Dr Michael Armstrong for treatment (at that stage) with Rapid Eye Movement Desensitisation and Reprocessing in, I think, 1992. He attempted to desensitise me to the arousing and morbid anxiety associated with triggers to intrusive memories of that period of pethidine use. These included the smell of pharmacy shops, pharmacy signs, seeing Doctors in Macquarie Street, memories of periods of drug use, memories of Board enquiries, etc. I gained considerable symptom relief from this treatment.

In early 1993, after I had presented a paper at a conference on Rapid Eye Movement Desensitisation and Reprocessing in California, I went to New York and had five (5) days of treatment with Dr Will Zangwill, a world expert in the use of EMDR and a teacher of the technique worldwide, including Australia. A copy of such paper can be provided if required.

Again, he targeted specifically the anxiety and depression symptoms and Post Traumatic Stress Disorder symptoms I was suffering from that period of my drug use and resultant investigation. However, he also spent some time treating earlier memory traces, which came back during the EMDR sessions, particularly involving two (2) six (6) month periods of time I spent in an orphanage when I was six (6) and eight (8) years old.

I saw him again when he came to Australia in October, 1993, lecturing. I saw him on four (4) occasions and he urged me to have more prolonged periods of EMDR in Sydney.

I made arrangements to see Dr Armstrong on a regular basis when a time became available and commenced seeing him in early 1994. I see Dr Armstrong on a weekly basis for EMDR.

I should say that when I stopped seeing Dr Gertler I was under the impression that he no longer had an obligation to see me as directed by the Board. He told me he was no longer getting my urine sample results, and that he was no longer informing the Board of my progress and that he no longer had contact with the Board since he and I both understood that the Board was monitoring my well being through Dr Jonathan Phillips, whom I was seeing twice a year and Dr Stephen Jurd, whom I was seeing intermittently, ranging from two (2) monthly to six (6) monthly intervals depending on when he suggested I return to see him. I was also being monitored by the Board on three (3) monthly interviews and gave urine samples three (3) times per week.

I was not under the impression that the rigidity of my attendances on Dr Jonathan Phillips meant I had to be well within the three (3) month period. I think the regime, as referred to above, clearly indicates that I have tried to comply with the requirements as set."

In paragraphs 6, 7, 8, 9 and 10, the Respondent says,

"6. *I see Dr Michael Armstrong weekly. I have been seeing him since approximately May, 1994.*

I see Dr Stephen Jurd, on average, three (3) monthly intervals. He receives results of my urine samples.

I see Dr Jonathan Phillips twice a year for a review for the Board. I see a Sub-Committee of the New South Wales Medical Board, which convenes at three monthly

intervals. It comprises of Dr Tony Williams who chairs the Committee and one (1) or sometimes two (2) colleagues, one of whom is usually a psychiatrist.

7. *I see Dr Jonathan Phillips twice yearly, approximately at six monthly intervals. I last saw him towards the end of 1993 and planned to see him mid 1994. I was away overseas in July, 1994 and he was away prior to that, overseas. I did not realise that I was going to be out of time in relation to this six (6) month period of seeing Dr Phillips. To that extent, I accept that I have not complied, in the letter of the law, with the requirements as set. However, I believe that Dr Phillips is to provide you with a medical report in relation to this matter. I have not, nor has my Solicitor, seen that report.*

I did see Dr Phillips on my return to Sydney in August, 1994 and I will continue to see him at the end of 1994.

8. *In closing I would like to make the submission to your good self in saying that I no longer have an addiction to pethidine or any desire to use it episodically*

I was placed on a demanding schedule of obligations by the Medical Board and Complaints Unit, which had ultimately been beneficial and therapeutic in as much as they have served their purpose and value to treat the drug use problem.

I get my urine observed three (3) times per week, I see a psychiatrist weekly for therapy, I see another psychiatrist six (6) monthly for a review and I see a third psychiatrist with particular drug and alcohol expertise for further review and treatment approximately two (2) to three (3) monthly visits. In fact, there should be no doubt that this system works, or has in my case. I have enjoyed a number of totally drug free years with the exception of twenty-four hour periods when I suffered severe physical injury. Even at that time, however, the analgesic requirement was brief and of the one off type.

I have been drug free, not only from narcotics, but most medication. The only drugs I have taken of any kind are caffeine in coffee, light alcohol intake socially and aspirin if required. This has enabled me to once again lead a productive and energetic life. Firstly, and perhaps foremostly, to keep my marriage and family unit on track through what has been an extraordinarily difficult time, a combination of the drug use problem itself, coupled with the onerous financial task in trying to settle debts of many millions of dollars, following the collapse of my Melbourne Bank. It is in itself an achievement, not only for myself and my family, but also for the Board's drug rehabilitation program.

I am intensely busy in my psychiatry practice where I see patients from 9.00 a.m. to 6.30 pm usually followed by a ward round at Sydney Private Clinic. My medical diary showed the extent of my bookings and patients and is available for inspection if required.

On top of that, over the last two (2) years, I have completed my Masters Degree with the exception of the final dissertation which I am in the process of writing up now. I have become involved in an increasing number of lectures particularly since I have become interested in and developed some expertise in EMDR, which has made my clinical practice extremely busy and increased by lecture commitments considerably.

I also conduct, every year, six (6) weekly lecture programs at Sydney Hospital from 6.00 pm to 8.00 pm. in General Psychiatry for the Layman, which are attended by a full house of interested members of the community and business world.

I provide close assistance to my wife who is working very busily in our property development company in conjunction with investors. Our company is again productive

and profitable, even though it carries debt repayment commitments for the next seven (7) years.

I also wish to submit that I have continued my sporting career and I submit it has been outstanding during the 93/94 period and I submit that I would not have been able to achieve the results of my sporting career if I had an addiction to the drug pethidine. I advise that my sporting results, during that period, have been as follows:

- (a) Winning the Australian Cycling Championship for my age division 93/94.*
- (b) Winning the Australian Singles Sculling Championship 93/94;*
- (c) Winning the World Sculling Titles in my age division held in Vienna 1993 and currently preparing to defend my title in Amsterdam in some three (3) weeks time.*
- (d) In addition to medical and sporting achievements I have during that period, I have just completed, with "Fearless Films" the production of a one hour educational film on the Psychology of Sport. This video is due for commercial release on the 5th October, 1994. Its production also forms the basis of my Masters thesis and will be available if required from the 5th October.*

It is my submission that these efforts and achievements would not have been arrived at by myself if I had not been in excellent physical and psychological health at the time of setting out to achieve the same.

9. *For that, the Complaints Unit and Medical Board should be applauded, since the system of impaired Doctor rehabilitation, in my case has been and continues to be successful. I voluntarily approached the Therapeutic Groups Branch when after I sought consultation with no less than three (3) psychiatrists about myself recognised problems back in the late 1980's early 90's after an admittedly difficult period, feel that the treatment program was highly successful.*

It had been the first time I had taken pethidine for some twenty-one months and I was pleased that it gave me no further wish to use it, other than in relation to the severe pain experienced that night.

10. *In regard to your letter dated the 5th August, 1994, which require details of urinalysis test dates, almost all are accountable. However, there were some occasions on which I note only two (2) urine samples were given rather than the required three (3).*

On numerous occasions I would arrive for testing just prior to 6.00 pm. closing. Occasionally I would arrive one or two minutes late or sometimes the girl on duty would leave some minutes early. On other occasions I was simply unable to get away from some patient crisis going on in my rooms. However, I try to go Monday, Wednesday and Friday. If I miss a day, I try to go Tuesday, Thursday or Saturday morning (open between 8.00 am. and 10.00 a.m.). There would only be some two or three times in the last two (2) years that I have physically been unable to get to the rooms to pass my urine three (3) times per week

22 Dec. - 30 Dec. 1993 Christmas holidays.-Whale Beach

1 Jan - 6 Jan 1994 Christmas holidays - Whale Beach

25 Jan - 6 Feb. 1994 Overseas 24.1.94 to 6.2.94

24 Feb - 2 Mar. 1994 Taree Rowing Titles 25.2.94 to 2.3.94

8 Mar - 15 Mar 1994 Training in Adelaide Aust. track championships

30 April - 8 May 1994 Adelaide - Aust. track championships 2.5.94 to 8.5.94

2 July - 10 July 1994 Thredbo 2.7.94 to 10.7.94

Twice weekly urinalysis instead of required 3 per week tests.
week commencing:

21 Feb, 1994	Extremely heavily booked week with patients due to departure to Taree on 24 February, 1994.
28 March, 1994	Easter - departed Thursday Whale Beach for Easter holidays.
8 April, 1994	Heavy patient bookings, plus pressing Court reports.
25 April 1994	Anzac Day. Short week.
23 May, 1994	Heavy patient bookings. Two (2) Court reports. Lecture 2.5.94
30 May, 1994	Heavy patient bookings. Away Friday, 3rd May pm. and Saturday 4 May, 1994. Penrith rowing training.
13 June 1994	Queen's Birthday weekend. Townsville dep. 16.7.94 - 18.7.94
27 June, 1994	Extremely heavy patient bookings due to following week in Thredbo.

It has been suggested to me by my Solicitor that if at any time, due to circumstances, either beyond my control or because I am on holidays or the like, that I will not be complying with these requirements, I should obtain some approval in writing. I had never thought that was necessary, I thought my prima facie commitment was sufficient. If that is necessary, then I am prepared to do so. "

It is to be noted that at the beginning of paragraph 6, the Respondent says that he has been seeing Dr Armstrong as a treating Psychiatrist, weekly since May of 1994. This does not explain the gap in regular treatment from a Psychiatrist as required by condition (a) between October, 1993 and May of 1994. It is worthy of note that his significant breaches of the conditions of registration occurred in this period. Information given to the Tribunal on 2 December, 1994 by consent of the parties reveals that, during this period, he saw Dr. Armstrong on 15 and 22 February 1994, on 15 March 1994 and on 10 May 1994.

In paragraph 8 the Respondent says -

"I have enjoyed a number of totally drug free years with the exception of 24 hour periods when I suffered severe physical injury. Even at that time, however, the analgesic requirement was brief and of the one off type. "

This was certainly not the case with the incident of 5 November, 1993 and was on the balance of probabilities not the case in relation to the incident of 30 April/1 May 1994.

On the final page of his letter, the Respondent seeks to excuse his failure to attend for urinalysis between 24 February and 2 March 1994 by stating that he was at Taree for the rowing titles between 25 February and 2 March. The lie is given to this statement by the records from the Health Insurance Commission which show that claimed to that Commission that:-

on 25th February he saw a total of 7 patients, 6 of whom live in the Sydney Metropolitan area and one of whom has a Western Australian address. 5 of these patients were seen between 45-75 minutes each and 2 in excess of 75 minutes.

on 26 February he saw 8 patients all of whom live within the Sydney Metropolitan area. Seven of these patients were seen for between 45-75 minutes and one was seen for more than 75 minutes.

on 1 March, 1994, he saw a total of 6 patients, all of whom live within the Sydney Metropolitan area. Four of them were seen for between 45 and 75 minutes and two for a period in excess of 75 minutes.

His explanation for not attending urinalysis between 30 April and 8 May 1994 that he was attending the Australian track championships at Adelaide is also inconsistent with the records of his charges as contained in the Health Insurance Commission's records which have been referred to earlier.

THE PSYCHIATRIC EVIDENCE.

The Tribunal has had the benefit of a report and evidence from Dr James Bell, the Director of the Drug and Alcohol Unit at the Prince of Wales Hospital. He expresses the view that the pattern of ill judgment, disingenuousness and acting out, reflected in the conduct of the Respondent are a source of grave concern for anybody practicing medicine especially psychiatry.

Dr Bruce Westmore, a forensic Psychiatrist, likewise reported and gave evidence. He regarded the Respondent's authorising of the administration for himself of 200 mgs of pethidine and taking possession of a further 100 mgs on 5 November, 1993 when his authority to be in possession and supply of a drug of addiction had been withdrawn, attracted strong disapproval of himself and his professional peers. He also expressed the view that his providing of inaccurate information on the morning of the 5 November to Dr Phillips is part of an irrational behaviour and further evidence of the extent of drug dependency.

In his report of 11 November, 1994, prior to which he had been provided with corrections to a lot of previous misinformation, Dr Phillips says that the Respondent's conduct, in authorising the administration to himself of 200 mgs of pethidine and in taking possession of a further 100 mgs at the Rose Bay Private Hospital on 5 November 1993 attracts his strong disapproval and would also attract the strong disapproval by his professional peers of good repute and competence. This was particularly so in the context of the Respondent being prohibited from possessing or prescribing any drug of addition at the time.

Dr Phillips says that if the Respondent required treatment for a physical or psychological problem, it would have been his responsibility to seek treatment from a Medical Practitioner and inform that person of his obligations in relation to the determination of the Professional Standards Inquiry.

On behalf of the Respondent, the Tribunal has had the benefit of a lengthy report from Dr Michael S. Armstrong, Psychiatrist. He takes Dr Bell's report to task in a number of respects and expresses disagreement with some of the conclusions drawn by him. Unfortunately Dr Armstrong had not been given the full picture by the Respondent. For example, he criticises Dr Bell's assertion that the Respondent was covering his tracks, given the reality that the Respondent immediately went to see Dr Phillips and told him about his use of pethidine. However, the Respondent did not in fact tell Dr Phillips the whole truth on that occasion, only part of the truth. Again, when dealing with Dr Westmore's report, Dr Armstrong says that the Respondent told him that, following upon obtaining the 5 ampoules of pethidine on 1 May, he was mortified at the thought of pethidine turning up in his urine yet again, and in fleeing to stay with close friends in Adelaide, he was avoiding the associated pain and embarrassment. Here too, the Respondent had been less than frank with Dr Armstrong. As pointed out earlier, the Health Insurance Commission records show that at that stage, he was in Sydney and seeing patients.

The Defendant has also tendered reports from Dr Kevin Vaughan, a clinical lecturer in Psychiatry at the University of Sydney. He takes a number of comments of Dr Bell to task, in some cases, with justification. However, he too had incomplete information. He says in his report -

"from February, 1992 until November, 1994 there was usage on 2 occasions, on both occasions for physical pain."

In the first place there was usage on three distinct occasions. On the first occasion there was multiple usage, including self prescription and self administration. On the third occasion, the Respondent allowed a doctor to prescribe 5 ampoules when only one was required and he took those 5 ampoules into his possession, knowing that it was in breach of his conditions of registration.

In a further report of the 23 November, 1994, Dr Vaughan describes Dr Hampshire as a man and a Psychiatrist in very glowing terms. There are likewise glowing testimonials of him from Dr Wendy Unwin, Dr Russell Meares, Miss Jackie Sutton, Dr W. R. Roney, Mr Whitby, solicitor, Mr John Marsden, solicitor, and from Mr Brian Karney.

THE RESPONDENT'S APPROACH TO THIS INQUIRY.

At the commencement of the hearing, counsel for the Respondent informed the Tribunal that his client was sending a letter to the Medical Board requesting that his name be removed from the Register of Medical Practitioners. On the second day of the hearing, we were informed that the letter had been sent that day.

On 30 November, 1994, the Tribunal received from the Registrar of the New South Wales Medical Board an amended Certificate in accordance with Clause 11 of Schedule 2 of the Medical Practitioners Act advising that the name of the Respondent was removed from the Register of Medical Practitioners at his own request pursuant to Section 27 of the Act on 30 November, 1994.

This development does not affect the jurisdiction of this Tribunal. Under section 40 of the Act, a complaint about a registered medical practitioner may be dealt with, even though the practitioner has ceased to be registered. For that purpose a reference in the Act to a registered medical practitioner includes a reference to a person who has ceased to be registered. The effect of the Respondent's ceasing to be registered is merely in the form of the order ultimately to be made and not in the powers of this Tribunal.

The Respondent has given no evidence in this case. Indeed, through his Counsel, he indicated that there was no dispute over the basic facts adduced in evidence by and on behalf of

the complainant. The issue was taken as to the opinions of Drs Bell, Westmore and Phillips, at least in part.

FINDINGS.

For reasons already given, this Tribunal is comfortably satisfied on the balance of probabilities that the allegations set forth in particulars i - vii inclusive under Complaint 1 are established.

The next question to be determined is whether, in the light of these findings, the Respondent has been guilty, merely of unsatisfactory professional conduct, or whether the conduct goes further, to come within the ambit of professional misconduct.

Under section 36 of the Act, unsatisfactory professional conduct includes any contravention by the practitioner, whether by act or omission, of a condition to which his or her registration is subject. There is no doubt that the Respondent has been guilty of unsatisfactory professional conduct in this respect.

Section 37 defines professional misconduct as unsatisfactory professional conduct of a sufficiently serious nature to justify suspension of the practitioner from practising medicine, or the removal of the practitioner's name from the Register.

This Tribunal is comfortably satisfied on the balance of probabilities that the conduct of the Respondent in breaching his conditions of registration, is of a sufficiently serious nature to justify the removal of his name from the Register. If, by the time our judgment is being delivered, the Respondent has ceased to be registered, then his conduct is sufficiently serious to order, pursuant to section 64 (2) that he be not re-registered. The reasons for coming to these conclusions are set out earlier but the more important of them are: -

1. The events of 5 November and 1 May, show a recurrence of many of the matters which cause the Professional Standards Committee concern in their reasons for decision of April, 1992, such as:
 - * the use of pressure and manipulation of persons to obtain prescriptions for supplies of pethidine. (see para. 2 (c) of the findings)
 - *the use of deception to conceal his use and dependence upon pethidine. (see para. 2 (e) of the findings)
 - *the events of 5 November show a reversion to self administration. (see para. 2 (h) of the findings)

* the Respondent repeatedly failed to disclose to his treating and reporting Psychiatrist that he continued to use Pethidine, thereby largely invalidating his treatment in a self-destructive way. (see para. 2 (k) of the findings)

*he failed to disclose fully to the Health Care Complaints Commission, in his letter of 24 August, 1994 in response to a specific request, the full extent of his abuse of pethidine. (see para. 2 (n) of the findings)

*his letter of 24 August 1994 attempts to minimise his use of and likely effects of pethidine on his mental state, with self illusion denial and rationalisation to deal with his dependence. (see para. 2 (o) of the findings)

2. He has breached the conditions, not on isolated occasion, but on many occasions over a particular period of 6 months.
3. His conduct surrounding those breaches indicate the class of misconduct to which the Professional Standards Committee referred adversely in April 1992. At that stage the Professional Standards Committee felt that the Respondent should be given the chance of continuing to practice subject to stringent conditions. Although there was no apparent breach of those conditions between April 1992 and early November 1993, there were repeated breaches over the ensuing 5 or 6 months which give rise to a comfortable satisfaction that he can not be relied upon at this stage to comply with conditions in the future and the further comfortable satisfaction that for the protection of the community the Respondent should be deregistered.
4. On the evidence before this Tribunal the Respondent's relapses give grave concern for the future.
5. Whilst the percentage of failures to attend for urinalysis may be small in comparison with the total number of attendances, that is really beside the point. Those failures to attend were part of a period when the Respondent believed that opioids would be detected. His false explanations to the Health Care Commission, that he was in Taree or Adelaide lends support to this finding.
6. The breaches of the conditions cannot be excused by the fact that they were temporally related to traumatic events. The incidents lead to the conclusion, that without proper therapy, conscientiously undertaken by the Respondent, he will remain subject to and likely to become a victim of a propensity in the future to relapse into the taking of prohibited drug, pethidine.
7. Given his knowledge as to the importance of the conditions, his failure to adhere to them constitutes conduct of sufficient seriousness as to justify his removal from the Register.

The second Complaint alleges that the Respondent suffers from an impairment.

Impairment is defined in the dictionary to the Act, clause 3 as

"a person is considered to suffer from an impairment if the person suffers from any physical or mental impairment, disability, condition or disorder which detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to practice medicine. Habitual drunkenness or addiction to a deleterious drug is considered to be a physical or mental disorder".

A finding of impairment involves reference to the Impaired Registerance Panel for special treatment. It was on this basis that the Respondent was dealt with by the Professional Standards Committee in April, 1992.

The gravamen of this Tribunal's findings against the Respondent are such that it is considered inappropriate for him to be dealt with as an impaired person. He is one who has committed a serious breach of the proper conduct that one expects of a medical practitioner. Accordingly, no finding is made on this Particular.

The fact that has sought de-registration voluntarily is a matter that is taken into account in his favour. It may well be that without the external restraints imposed by the conditions enforced upon him, he may be able to set up a regime which will enable him to overcome his problems with regard to pethidine. There is no doubt from the evidence that he is a highly intelligent person, a psychiatrist held in high esteem, a very caring medical practitioner and one who has devoted himself to the welfare of his patients.

In determining what orders should be made, this Tribunal, is not seeking to punish the Respondent, rather it is seeking to protect the public. This Tribunal does not feel that the Respondent should, for all time, be precluded from registration as a medical practitioner. If, at a later stage, he can establish to a Medical Tribunal constituted under the Medical Practice Act, by way of review under section 92 of the Act that the problems which have brought him to his present situation no longer apply and that he is no longer a physician at risk, then such a Tribunal may well permit him to be re-registered. This Tribunal does not seek in any way to bind or to influence a future Tribunal.

We have been asked to fix a period, pursuant to section 64 (3) within which an application for review of this order may not be made. We have given considerable thought to this matter. It is noted that the Repondent's breach of the conditions imposed in April, 1992 occurred some 19 months later. It is also borne in mind, that the longer the period nominated by the Tribunal, the more difficult it is for a practitioner to keep up to date with current changes in practice within his or her specialty. Bearing all of these matters in mind, the findings and orders of the Tribunal are as follows:-

1. The Complaint, that the Respondent has been guilty of professional misconduct within the meaning of section 37 of the Medical Practice Act, is found proved.
2. It is ordered that, he having ceased to be registered, he be not re-registered.
3. An application for review of this order may not be made until after the expiration of 2 years from this date.