

A Doctor's Duty or Professional Obligation to Assist

Medical Board of Australia and Dekker [2013] WASAT 182

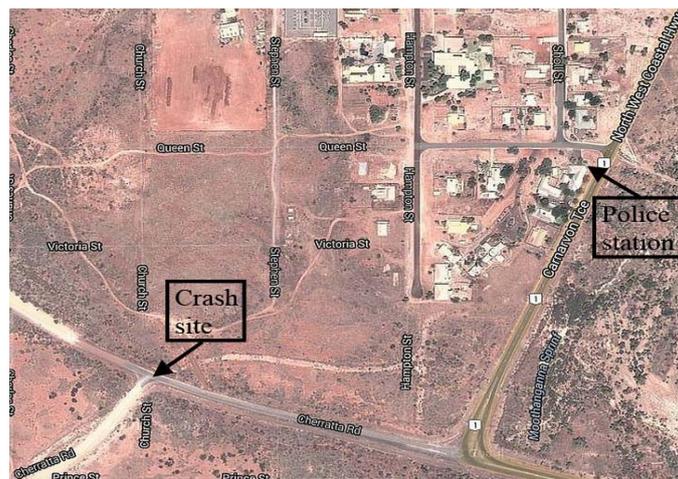
Enore Panetta
Director



Facts

- ▶ Dr Dekker was driving back from the tip and has a 'near miss'
- ▶ It was dark and there was no street lighting
- ▶ No mobile telephone, no torch, no medical equipment or first-aid kit

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LAWYERS



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- ▶ *“... I know there would be a bad injury and I know it was a waste of time so I go to police so they can get help.”*
- ▶ *“... I was in a state of shock. I was terrified as I thought I had almost been killed. ... I was physically shaking and screaming. ... unable to think in a coherent manner. In that moment I feared for my life ...”*

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Criminal Proceedings

- ▶ 2005 – convicted of dangerous driving causing death
- ▶ 2009 – conviction quashed by the WA Supreme Court of Appeal: *Dekker v The State of Western Australia* [2009] WASCA 72

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Medical Board Proceedings

- ▶ 2006 – proceedings brought in the State Administrative Tribunal
- ▶ ‘infamous or improper conduct in a professional respect’ in failing to stop and render assistance
- ▶ Heard: 22 October 2013

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Tribunal’s Decision

- ▶ Conduct in failing to stop and render assistance to the occupants of the other vehicle would reasonably be regarded as ‘improper conduct in a professional respect’ within the meaning of s 13(1)(a) of the *Medical Act 1894* (WA)
- ▶ Infamous conduct if she had left the scene and not reported the event at all

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- ▶ [22] *“... a medical practitioner’s conduct may be ‘in pursuit of the practitioner’s profession’ even where it does not occur in the carrying out of medical practice, provided that there is a sufficiently close link or nexus between the conduct and the profession of medicine”*

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- ▶ [39] *“It is improper conduct in a professional respect for a medical practitioner who is aware that a motor vehicle accident has or may have occurred in their vicinity and that anyone involved has or may have suffered injury not to make an assessment of the situation, including the nature of any injuries and needs of persons involved, and render assistance, by way of first aid, when the practitioner is physically able to do so, notwithstanding that the practitioner immediately reports the matter to police or other emergency services.”*

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- ▶ [40] *“... Although it was dark and the practitioner did not have a torch with her, there is no reason why she could not have used the headlights of her vehicle to illuminate the scene. Although the practitioner did not have any medical equipment or a first aid kit with her, her knowledge and skills as a medical practitioner would have enabled her to make an assessment of the condition of the occupant or occupants of the second vehicle and render first aid to them if necessary.”*

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- ▶ [41] *“... the fact that she did not own or have a mobile telephone with her at the time and the fact that the police station to which she drove to report the incident was only a short distance away did not discharge her professional duty to make an assessment and render assistance. ... In order to save life, first aid may need to be rendered immediately. Any delay in providing first aid after a traumatic injury, even a delay of a short period, could result in death.”*

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- ▶ [43] *“The fact that the practitioner was “in a state of shock”, “petrified” and “freaked out” after the “near miss” incident is hardly surprising Because she is a member of the medical profession ... her professional duty required that she overcome or at least put aside the shock and provide assistance Although the practitioner’s ‘shock’ may be relevant in relation to penalty, it does not have the consequence that her conduct would reasonably be regarded as anything other than improper ...”*

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Appeal

- ▶ Dec 2013 – Appeal filed in the SCWA Court of Appeal
- ▶ Heard: 20 August 2014

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Discussion

- ▶ How can you have a professional duty to overcome shock?
- ▶ No finding of fact that Dr Dekker was physically capable of rendering assistance, notwithstanding her shock
- ▶ How could the practitioner's shock be relevant to penalty?

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- ▶ Does this mean that there is an absolute obligation to assist?
- ▶ Questions of judgment involved
- ▶ No evidence that it was possible for Dr Dekker to have used the headlights to illuminate the scene
- ▶ No proper basis to find that Dr Dekker was under a professional duty or obligation to assist

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Good Medical Practice: A Code of Conduct for Doctors in Australia

2.5 Treatment in emergencies

Treating patients in emergencies requires doctors to consider a range of issues, in addition to the patient's best care. Good medical practice involves offering assistance in an emergency that takes account of your own safety, your skills, the availability of other options and the impact on any other patients under your care; and continuing to provide that assistance until your services are no longer required.

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