



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 123/00/61C

IN THE MATTER of the MEDICAL PRACTITIONERS

ACT 1995

IN THE MATTER of disciplinary proceedings against F, a
medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference at 7.30 pm on Thursday 6 July 2000.

PRESENT: Mrs W N Brandon - Chair

Mrs J Courtney, Dr R S J Gellatly, Dr R W Jones,

Dr U Manukulasuriya (members)

APPEARANCES: Ms K P McDonald QC for Complaints Assessment Committee

Mr A J Knowsley for respondent

Ms G J Fraser - Secretary

(for first part of call only)

**DECISION ON THE REQUEST BY THE COMPLAINTS ASSESSMENT
COMMITTEE FOR CONDITIONS TO BE IMPOSED**

1. THE REQUEST:

1.1 A Complaints Assessment Committee (the CAC) appointed to consider a complaint concerning Dr F has determined that it has reason to believe that grounds exist entitling the Medical Practitioners Disciplinary Tribunal (the Tribunal) to exercise its powers under section 109 of the Medical Practitioners Act 1995 (the Act).

1.2 BY letter dated 20 June 2000, the CAC advised the Tribunal accordingly. The charge alleges disgraceful conduct by Dr F and arises out of one or more consultations with a female patient occurring between 10 October 1989 and 20 May 1992. The CAC also recommended that pending determination of the charge conditions should be placed on Dr F's practice pursuant to section 104 of the Act.

1.3 THE recommendations were made on the basis that the charge was a serious one and it was in the interest of protection of members of the public that such a condition be imposed. Prior to the hearing of the CAC's request, Ms McDonald, Counsel for the CAC, advised that it was not possible to provide written submissions to the Tribunal in support of the recommendations and, in any event, the request was made solely in the interests of public safety, given the seriousness and the nature of the complaint made against Dr F.

2. SUBMISSIONS:

2.1 **ALTHOUGH** the Tribunal is not obliged to give any notice of an intention to make an order under section 104, in the interests of natural justice and fairness to the respondent, the Tribunal considered that it was appropriate and convenient in the circumstances of this charge to proceed 'on notice' and accordingly invited Dr F's Counsel, Mr Knowsley, to file submissions prior to the telephone conference for consideration by the Tribunal, and Mr Knowsley accepted that invitation.

3. THE DECISION:

3.1 **THE** condition recommended by the CAC was that a chaperone should be present when Dr F is examining a female patient, and that notices of the availability of a chaperone be placed in the waiting room and consulting room.

3.2 **AT** the conference, Ms McDonald advised the Tribunal that the CAC was recommending that the Tribunal impose a condition requiring that Dr F provide a chaperone at all times when examining a female patient, i.e. that it be compulsory for a chaperone to be present on all such occasions.

3.3 **FOR** Dr F, Mr Knowsley submitted that it was not accepted by Dr F that there was any requirement for a chaperone, however if the Tribunal was minded to make an order in the terms sought, then it should be limited to requiring Dr F to offer a chaperone when examining female patients. A draft notice was provided in the submissions.

3.4 HAVING heard from both Ms McDonald and Mr Knowsley, and having considered the written submissions filed on behalf of Dr F, the Tribunal determined that conditions should be placed on Dr F's practice pending the determination of the charge laid against him.

3.5 ACCORDINGLY, Dr F is to advise all female patients that they are entitled to have a chaperone or support person with them during examinations and/or consultations, and a notice to that effect is to be placed in the waiting room and consulting room of his practice rooms.

3.6 THE Notice is to be displayed in a conspicuous location so that it can readily be seen by patients entering Dr F's rooms. If possible, it should be placed on the front of the reception desk so that patients can tell the receptionist if they require a chaperone when they 'check in' for their appointment.

3.7 FOR the following reasons, the Tribunal does not consider that it is necessary or desirable in the interests of public safety that Dr F should be required to have a chaperone present at all times when examining female patients:

- (i) The presence or otherwise of a chaperone should be a matter of choice for Dr F's female patients, as indeed it should be for any patient. Of course, from time to time Dr F himself may require a chaperone to be present even if the patient does not herself wish to have a chaperone present, and he is free to do so.

- (ii) However, the Tribunal considers that, absent any strong reason to the contrary, it is unnecessarily intrusive to require that a third party be present whenever a patient is examined by a doctor. This is particularly the case in smaller communities, for obvious reasons.
- (iii) In the event the risk to patients was considered so great that it was necessary to impose such a condition, it is likely that suspension would be a more appropriate course. Suspension has not been sought or suggested by the CAC and the Tribunal is satisfied that suspension is not warranted in the present circumstances.
- (iv) In any event, as a matter of good practice, every practitioner should offer a chaperone. The Tribunal accepts that this may create some difficulties for sole practitioners, or those with smaller practices. However, equally there are also reasons why it may be even more appropriate for practitioners in these circumstances to advise patients that a chaperone is available if they wish.
- (v) Advice regarding the availability of a chaperone can most easily and unobtrusively be done by way of notice to that effect placed in the waiting room and consulting rooms.
- (vi) The events giving rise to the charge are alleged to have occurred between 1989 and 1992. There is no evidence of any other complaints or potential complainants before the Tribunal. In the event circumstances change, the issue can be revisited by the Tribunal either on its own motion, or on the application of the CAC.

(vii) The Tribunal is satisfied that, given the serious nature of the charge, and the nature and circumstances of the allegations giving rise to it, it is necessary and/or desirable to make an order imposing these conditions having regard to the public safety.

4. ORDERS:

4.1 THE Tribunal orders that pending the determination of the charge laid against him, or until further order of the Tribunal, Dr F is to advise all female patients that they are entitled to have a chaperone present during examinations and/or consultations, and that a chaperone is available if they require.

4.2 THIS advice is to be given by way of a notice placed in the waiting room and consulting room of his practice/s. The Notice is to read as follows:

“You are entitled to have a chaperone or support person present during consultations. A chaperone is available for all consultations. If you would like a chaperone please ask the staff or the doctor.”

4.3 DR F is to verbally offer a chaperone to all female patients who are to undergo any examination of an intimate nature (unless the patient is already chaperoned).

DATED at Auckland this 20th day of July 2000.

W N Brandon

CHAIR