



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

PO Box 5249, Wellington • New Zealand
Ground Floor, NZMA Building • 28 The Terrace, Wellington
Telephone (04) 499 2044 • Fax (04) 499 2045
E-mail mpdt@mpdt.org.nz

DECISION NO: 158/00/67C

IN THE MATTER of the Medical Practitioners Act
1995

-AND-

IN THE MATTER of a charge laid by a Complaints
Assessment Committee pursuant to
Section 93(1)(b) of the Act against
WARREN WING NIN CHAN
medical practitioner of Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mrs W N Brandon (Chair)
Mrs J Courtney, Dr G S Douglas, Dr B D King, Dr L F Wilson
(Members)
Ms K Davies, Hearing Officer
Ms K G Davenport, Legal Assessor
Ms H Gibbons (Stenographer)
Ms J Wareham (Scopist)

Hearing held at Auckland on Wednesday 7 February 2001

APPEARANCES: Mr R Harrison QC for a Complaints Assessment Committee ("the CAC")

Dr W W N Chan - Not represented

**TRIBUNAL'S DECISION ON DR CHAN'S APPLICATION FOR AN
ADJOURNMENT OF THE HEARING**

The Charge

1. This charge arises as a result of alleged failures and deficiencies on the part of Dr Chan in relation to his care and treatment of Ms A in July 1996. The charge alleges that Dr Chan is guilty of professional misconduct, and contains three Particulars alleging serious deficiencies in his anaesthetic practice; a failure to obtain informed consent to the liposuction procedure carried out by Dr Chan, and a failure to keep adequate records of his pre-operative, intra-operative and post-operative care of Ms A.

Chronology of the Charge

2. The Charge was notified to Dr Chan by a Notice of Charge dated 19 October 2000. The date of hearing of the Charge advised to Dr Chan in the Notice of Charge was 13 & 14 December 2000. In accordance with the Tribunal's usual practice, a Directions Checklist was enclosed with the Notice of Charge, together with a request that the Checklist be completed and returned to the Tribunal prior to the Directions Conference scheduled for 14 November 2000. Under cover of a letter dated 2 November 2000, Dr Chan advised the Tribunal that he did wish to be heard in defence of the Charge; that he would be represented by Counsel yet to be appointed by his medical defence insurer (based in Australia); and that he sought name suppression and a private hearing "*to avoid the scenario of trial by media*" which had occurred in the past.

3. Virtually no other information regarding the charge or Dr Chan's defence was provided as he simply advised that all of the information sought by the Tribunal was "*To be decided by counsel*".
4. The Directions Conference was held on 15 November 2000 (the original date was unsuitable for the parties). Dr Chan did not attend at the notified time of 9.30am, and he was not represented. At 10.10 am Dr Chan contacted the Tribunal to advise that he was in Australia and had forgotten to allow for daylight saving time, and had missed the Directions Conference. He was advised that the date of hearing had been re-scheduled to 7 and 8 February, and that his applications for name suppression and a private hearing would be heard by telephone conference on Monday 11 December 2000. A copy of the Directions Conference Minute was also forwarded to him. By letter dated 1 December 2000, the Tribunal confirmed the hearing dates of 7 and 8 February 2001, the composition of the Tribunal and details of the time and place of the hearing.
5. Dr Chan (who was in Australia) attended at the teleconference call on 11 December, and made submissions in support of his applications. The applications were dismissed and advised to Dr Chan in a Decision dated 25 January 2001. By facsimile letter received on 5 December 2000, Dr Chan requested an adjournment of the hearing because he would be operating in Sydney on 7 & 8 February 2001. He advised that he would be in Auckland between 22 February and 17 March 2001, and asked to be advised of the new date.
6. On 14 December 2000 Dr Chan was advised that all of the arrangements for the hearing had been made, and that it was not possible to change the dates.
7. On 19 December 2000, Mr Harrison QC forwarded a copy of the 'Agreed Bundle of Documents' to Dr Chan, and confirmed that the hearing was to proceed on 7 & 8 February 2001.
8. On 20 December 2000, Dr Chan wrote to the Tribunal asking that the Charge be dismissed because "*It has been suggested to [me] by my legal advisor that the CAC and MPDT have no legitimacy to prosecute and hear this case*". This request was

made on the basis that the Health and Disability Commissioner (to whom the complaint had been referred by the Medical Council as required by s.83(4) of the Medical Practitioners Act 1995 (“the Act”), and the Commissioner had determined to take no action and to close her file provided Dr Chan apologised to Ms A. He had done so, and regarded the complaint as being resolved.

9. By letter dated 21 December 2000, the Tribunal advised Dr Chan that the CAC did have the power to lay the charge against him, and that the hearing would proceed on 7 & 8 February 2001.
10. On 30 January 2001, the Tribunal advised Dr Chan that it had not received any briefs of evidence from him, and asked if he intended to file any evidence in his defence. The Tribunal advised Dr Chan that he was under no obligation to present any evidence at the hearing, and that he could give evidence orally if he wished. The Tribunal asked Dr Chan to advise his intentions in this regard. It also confirmed the hearing date.
11. The Tribunal also sent an urgent fax to Dr Chan on 31 January 2001, seeking a response to the letter faxed to him the previous day. On 1 February 2001, the Tribunal received a message from Dr Chan’s nurse advising that his wife had telephoned and advised her that Dr Chan would be returning to New Zealand on 6 February 2001. The Tribunal asked his nurse to ask Dr Chan to telephone the Tribunal as soon as she heard from him. Dr Chan did not contact the Tribunal.

Dr Chan’s application for an adjournment

12. On the morning of the hearing Dr Chan did not arrive at the appointed time. Mrs Brandon instructed the Hearing Officer to try to contact Dr Chan, and adjourned the hearing to 9.45am. At 9.30, the Tribunal was advised that a facsimile letter from Dr Chan had been received at the Tribunal’s office in Wellington this morning. The fax header records that the facsimile was sent from Sydney at 21.38 hrs on 5/02/01, and 11.40am 6/02/01. Due to Waitangi Day, the facsimile was not seen by any of the Tribunal staff until the morning of the hearing.

13. Dr Chan requested an adjournment of the hearing as he was in Australia and could not fly due to a middle ear infection.
14. For the CAC, Mr Harrison opposed the request for an adjournment. He referred to the chronology of the Charge to date (as set out above). Mr Harrison noted that notwithstanding Dr Chan's advice in October last year that counsel would be appointed, he was still unrepresented. Mr Harrison submitted that the Tribunal had gone out of its way to be fair to Dr Chan, but he had taken no steps to file any evidence on his behalf, or to respond to communications, and his conduct throughout, reflected in the facsimile request for an adjournment, was one of treating the Tribunal and its procedures with contempt. Dr Chan was not unfamiliar with legal proceedings, particularly the proceedings of this Tribunal.
15. In the absence of any medical evidence, Mr Harrison did not accept the explanation given by Dr Chan, when viewed against the background of his conduct to date. Even if he is suffering from an ear infection, Mr Harrison submitted that Dr Chan had taken the risk of not being able to attend the hearing by remaining in Sydney until the 'very eve' of the hearing.
16. The CAC was ready to proceed, and its witnesses had made detailed arrangements to enable them to attend the hearing.
17. The Tribunal sought directions and advice from its legal assessor, Ms Davenport. Ms Davenport's advice was that the Tribunal was required to make a decision on Dr Chan's application which most fairly reflected its obligation to observe the rules of natural justice. This meant that the Tribunal was required to weigh up the right of the CAC, and Ms A, to have the hearing proceed, against Dr Chan's interests. A professional disciplinary charge is a serious matter for any doctor, and the hearing of a charge ought not to be taken lightly. The Tribunal had to bear in mind that Dr Chan was at risk of an adverse finding and substantial penalties, if the Tribunal found him guilty of the charge.

18. However, the Tribunal was entitled to consider the reasons why Dr Chan was not present, and the background of events leading up to the hearing, as outlined by Mr Harrison, and Dr Chan's conduct to date. In this regard, Ms Davenport referred to two other matters; the first was Dr Chan's request for an adjournment made in December and his advice that he would be operating in Sydney on the dates scheduled for the hearing, and the fact that this application was made virtually on the morning of the hearing - and from Sydney, which suggested that he had kept to his original intention of operating in Sydney on the 7th and the 8th of February.
19. Mr Harrison noted that none of the correspondence referred to by Ms Davenport or Ms Davies had been copied to the CAC, or to him. Now that he was aware of Dr Chan's advice that he would be operating in Sydney on the two days allocated for the hearing, this provided support for his submission that Dr Chan's conduct was entirely consistent with an intent not to appear at today's hearing, but rather to prefer to adhere to his earlier timetable in Sydney in preference to appearing before the Tribunal. It was his submission that he had deliberately taken the risk that the hearing would proceed without him, and he must take the consequences.
20. After giving due consideration to Dr Chan's request, and the basis for it, Mr Harrison's submissions and Ms Davenport's advice, the Tribunal decided that the hearing should proceed. It accepted that it must observe the principles of natural justice, and that any professional disciplinary charge against a practitioner is a very serious matter. However, it is equally the case that the practitioner should take the charge seriously, and should take all appropriate steps to ensure that he keeps the Tribunal apprised of his circumstances, that he responds to correspondence, and generally treats the CAC, the complainant, the profession and the Tribunal with respect and courtesy.
21. This is especially the case in the context of a professional disciplinary charge, involving as it inevitably does, allegations of failures and deficiencies in terms of his professional obligations and duties. A practitioner's professional obligations are owed not only to his patients, but also to his or her professional peers, and to the profession generally. A

practitioner should not conduct himself in such a way as may bring the profession into disrepute.

22. A complaint made against a doctor to his professional body, in this case the Medical Council, must be treated seriously. To treat the complaint lightly, or with casual indifference is demeaning and discourteous to the complainant, who may well feel that he or she has already been treated badly by the practitioner; it adds insult to injury.
23. Whether or not the Tribunal finds the practitioner guilty of the charge, the complainant may nevertheless continue to believe that he or she did suffer harm as a result of the practitioner's failures or deficiencies, and they are entitled to have the complaint treated seriously, and to be heard timeously.
24. It is also relevant that the medical profession is effectively self-regulated, a privilege which carries with it obligations to ensure that the profession is regulated and organised in such a way as to ensure that the health and safety of members of the public is protected, and enhanced.
25. As has been said on many occasions, the relevant 'public interest' resides in the public's expectation of the accountability and transparency of the disciplinary process; the maintenance of the public confidence in the integrity of the disciplinary process; public confidence in the medical profession generally, and in the reputation of the profession, and the public interest embodied in the legislation itself: *W v CAC MA 122-98*, 9/7/98 (DC); *ZX v MPDT* [1997] DCR 638; and *P v MPDT*, AP 2490/97, 18/6/97 (DC).
26. These are all relevant factors to be taken into account by the Tribunal in balancing Dr Chan's interests, and the nature, background and timing of his application for an adjournment, and the interests of the CAC, Ms A, and the profession generally.
27. In relation to more practical matters, the Tribunal has incurred considerable expense (it is funded by the medical profession) in arranging the hearing, travel expenses, and the like. In all of the circumstances, and on the basis of the chronology and background to this hearing

referred to already, it is satisfied that Dr Chan has evidenced no serious intention of appearing at the hearing as scheduled. Nor has he arranged to be represented, notwithstanding his advice in October 2000 that counsel would be appointed. It is perhaps also worth noting that Dr Chan's practice as a cosmetic surgeon involves elective procedures, and he has not suggested either that he was detained in Sydney as a result of a professional emergency, or that there were any clinical reasons why his surgery originally scheduled for today could not have been re-scheduled to enable him to appear at the hearing.

28. In all the circumstances, he has had every opportunity to make appropriate arrangements to appear or to be represented at the hearing; he has provided no medical evidence to support his request on the grounds of ill-health. He has treated Ms A and the CAC in particular, extremely discourteously. The Tribunal is satisfied that Dr Chan has evidenced a clear intention to carry on his business and/or professional commitments in Sydney in preference to adhering to his professional obligations in New Zealand. As Mr Harrison submitted, he chose to take the risk that no adjournment would be granted, especially at such a late stage. He must accept the consequences.
29. Taking into account all of these matters, the Tribunal was satisfied that the hearing should proceed.

DATED at Auckland this 22nd day of March 2001

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W N Brandon

Chair

Medical Practitioners Disciplinary Tribunal