



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO: 188/01/88C

IN THE MATTER of the Medical Practitioners Act
1995

-AND-

IN THE MATTER of a charge laid by the Complaints
Assessment Committee pursuant to
Section 102 of the Act against
WARREN WING NIN CHAN
medical practitioner of Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mrs W N Brandon (Chair)

Ms S Cole, Dr J C Cullen, Dr G S Douglas, Dr A A Ruakere

(Members)

Hearing held by telephone conference on Monday 11 February 2002

APPEARANCES: [none]

The Application

1. The application seeks the revocation of orders suspending Dr Chan's registration made by the Tribunal on 18 January 2002. Those orders were made pursuant to section 104(1) of the Medical Practitioners Act 1995 ("the Act"). That section provides:

"104 Interim suspension of registration or imposition of conditions of practice in disciplinary matters –

(1) At any time after a notice has been given under section 103(1) of this Act to a medical practitioner, the Tribunal may, if it is satisfied that it is necessary or desirable to do so having regard to the need to protect the health or safety of members of the public, make an order that, until the disciplinary proceedings in respect of which that notice was issued have been determined, -

- (a) The registration of that medical practitioner be suspended; or*
- (b) That medical practitioner may practise medicine only in accordance with such conditions as are specified in the order."*

2. The Tribunal may make orders on the recommendation of the Director of Proceedings or a Complaints Assessment Committee, or of its own motion (s.104(2)). It is not obliged to give any notice to a medical practitioner that it intends to make such an order (s.104(3)). In this case, the Complaints Assessment Committee ("CAC") has recommended that Dr Chan's registration should be suspended pending the determination of these present charges, in respect of which Notices have been issued.
3. The Tribunal is the only body which is empowered to suspend a practitioner's registration on public safety grounds. The Medical Council may suspend a practitioner's registration, but only after a practitioner has failed a competency review, which is not relevant in the present circumstances.
4. In making the order to suspend Dr Chan's registration pending the determination of the charges against him, the Tribunal also ordered that the suspension of Dr Chan's registration was to take effect immediately.
5. This current application was made by Dr Chan on the following grounds:

1. That the order is unjust and unreasonable;
 2. That Dr Chan's safety record remains unblemished;
 3. That the order has prevented Dr Chan from resuming practice in Australia where he works in a hospital setting with an anaesthetist administering anaesthesia;
 4. Such an order is superfluous as Dr Chan has decided never to practise in New Zealand; and
 5. That the anaesthetic method used by Dr Chan was not dangerous.
6. Dr Chan also annexed a copy of the Brief of Evidence of Dr Malcolm Futter, filed in the context of his appeal against the Tribunal's Decisions 159/00/67C and 160/00/67C. That appeal (in large part involving procedural rather than substantive issues) was unsuccessful, and the Tribunal's decision was upheld in all respects.
7. The present application was opposed by the Complaints Assessment Committee principally on the grounds that there has not been a change, or sufficient change, in the circumstances which existed at the time the order was made to warrant a revocation or partial revocation of the orders made.
8. In the CAC's written submissions filed in response to Dr Chan's application and submissions, it was submitted that Dr Chan did not address the substance of the complaints made against him, or the concerns raised by the CAC in relation to its recommendation to the Tribunal that Dr Chan should be suspended from practising until the present charges are resolved. The CAC takes the approach that, in these circumstances, the order of suspension must remain in place until the hearing of the charges in April 2002.
9. In support of its submissions, the CAC filed an affidavit of John Steven Clarke, the lay convener of the Complaints Assessment Committee which has laid the present charges against Dr Chan. That affidavit includes as annexures the letters of complaint which were investigated by the CAC, and which ultimately gave rise to these charges. In his affidavit, Mr Clarke stated (at paras. 4 and 5):

“By reason of the similar nature of the complaints and the fact that we were aware that Dr Chan had been suspended last year for very similar matters, the CAC were very concerned about the public safety issues and Dr Chan continuing to practice without these issues being addressed. It seems these issues have been of concern to the Medical Council and/or the Disciplinary Tribunal before. We cannot see from the charges that Dr Chan has made any changes to his practice or taken any steps to advise the patients that he was not a plastic surgeon or altered his anaesthetic practice or that in any way his conduct had changed following the two decisions of the Disciplinary Tribunal

The question of the safety of his practice is paramount in our minds. The complaints relate to a variety of aspects of cosmetic surgery, breast implants, breast lifts, rhinoplasty and liposuction. These represent significant operations and at least one patient suffered from very severe complications and developed a postoperative infection, which does not appear to have been dealt with adequately by Dr Chan. It is difficult in the face of Dr Chan’s silence to know what explanations he might advance for the complaints made, but in the absence of such information all we can do is advise the Tribunal of our grave concerns for the safety of the public if Dr Chan is entitled to continue practicing once his suspension is lifted in January 2002.”

10. The Tribunal made numerous attempts to advise Dr Chan of the time of the telephone conference hearing scheduled to deal with his application. The Tribunal records that the Secretary attempted to send the notice of the hearing date and time and all of the other relevant material to Dr Chan by facsimile over a period of 2 or 3 days, and all of this material was also posted to Dr Chan’s last known business address. The Tribunal secretariat also attempted to contact Dr Chan by telephone. It proved impossible to transmit the material by fax. All details of Dr Chan’s telephone, facsimile and address for service had previously been confirmed to the Tribunal by Dr Chan.
11. Despite all of these efforts to contact Dr Chan, there was no appearance for Dr Chan at the hearing. After waiting for 15 minutes for both Dr Chan and Ms Davenport, Counsel for the CAC, to join the conference call, the Tribunal decided to proceed to determine the application ‘on the papers’.
12. For completeness, we record that the day after the telephone conference hearing, the Tribunal received a facsimile letter from Dr Chan sent the prior evening, after the Tribunal office had closed for the day. In his letter, Dr Chan advised a new facsimile number for

contact, and asked when the hearing of his application for revocation was to be held. The Tribunal responded by letter and advised him that the hearing had proceeded in the absence of both him and Ms Davenport (i.e. on the basis of their written submissions) and the Tribunal's decision would be advised to him in due course.

Background

13. The present application arises in the context of the hearing of four charges against Dr Chan, three of disgraceful conduct and one of conduct unbecoming and that conduct reflects adversely on his fitness to practise medicine. The charges allege that Dr Chan erred in his management and treatment of the complainant patients, in particular that he failed to obtain informed consent; failed to provide adequate explanations; in relation to his administration and the nature of anaesthesia administered to them, and their post operative care, or lack thereof.
14. It is noted that at the time of the Tribunal's decision to suspend Dr Chan's registration (18 January 2002) his registration was already suspended as part of the penalty ordered against him following charges involving allegations similar to those presently being determined against him. The Tribunal was satisfied that it was necessary and desirable to suspend Dr Chan's registration until the charges presently before it can be determined having regard to the need to protect the health and safety of members of the public.

Decision

15. For the reasons set out below, the Tribunal has determined that the application should be dismissed.

Reasons

16. The issue for the Tribunal is defined by the test contained in section 104(1); the Tribunal may only suspend a practitioner's registration, pending the determination of a charge, if it is satisfied that it is "*necessary and desirable to do so having regard to the health and safety of members of the public*".

17. The allegations made against Dr Chan are very serious and if upheld, would constitute conduct that has put patients at risk, and has caused them harm. The present charges, and the potential for harm, must be viewed against the background of a pattern of conduct, persisting over several years, despite repeated expressions of concern from this Tribunal, and fair notice being given to Dr Chan regarding those aspects of his practice that have given rise to the complaint, and adverse professional disciplinary findings.
18. It is also relevant that on every such occasion, Dr Chan has asserted that his practice has changed, particularly with regard to his anaesthetic practices, and that those aspects of his practice which have given rise to the complaint have been remedied.
19. The initial order was made on the basis that the Tribunal considered that the nature and similarity of the complaints and the history in respect of Dr Chan required his suspension pending determination of the charges. The present charges against Dr Chan are set down for hearing in April 2002.
20. Since the initial order to suspend Dr Chan was made the Tribunal has received a further two charges against Dr Chan from the CAC. The charges are similar in nature to the other four charges laid against Dr Chan. Dr Chan has been given notice of these charges, and he was made aware at the time of the Directions Conference on Tuesday 22 January 2002 that one of these further charges was to be laid.
21. Dr Chan asserts that the suspension order is preventing him from practising in Australia. He has submitted a letter of demand to the Tribunal asserting that the Tribunal must compensate him for loss of income in Australia. Dr Chan alleges that the Tribunal 'owes him' approximately \$1.1 million.
22. It appears that the Australian State medical registration boards have suspended Dr Chan's registration because he is suspended in New Zealand. However, as was submitted by the CAC, that is not a matter that is relevant to this Tribunal's decision-making powers. It can only properly consider Dr Chan's conduct in New Zealand, and the potential risk to the New Zealand public.

23. The Tribunal must exercise its powers in accordance with the Act; the principal purpose of which is ‘to protect the health and safety of members of the public’, i.e. the public of New Zealand, subject to the requirement to observe the rules of natural justice at each hearing, and otherwise as empowered under the Act.
24. Accordingly, the Tribunal confined its deliberations to the application and submissions before it, and to the question of whether the health and safety of members of the New Zealand public would be, or would potentially be, put at risk if the order suspending Dr Chan’s registration was revoked.
25. Dr Chan also submitted that, irrespective of the grounds for the order, a suspension order would be superfluous as he has decided never again to practise in New Zealand. In this regard, the Tribunal considered the import of a new complaint annexed to Mr Clarke’s affidavit, which relates to a procedure allegedly carried out July 2001, i.e. while Dr Chan’s registration was suspended.
26. The Tribunal took into account the fact that this letter of complaint is not a sworn statement (the complainant being overseas), and weighted it accordingly. However, the Tribunal is concerned that the nature of the complaint is very similar to the pending charges. The mere fact that Dr Chan may have practised medicine while his registration was suspended does not provide the Tribunal with any degree of comfort that this present application might be resolved by way of undertakings from Dr Chan not to practise in New Zealand pending the determination of these charges.
27. Dr Chan’s submissions indicate to the Tribunal a lack of insight about the nature of the complaints made against him. For example, notwithstanding the perennial, and serious, nature of previous charges upheld by the Tribunal, Dr Chan contends that his anaesthetic procedures are not dangerous.
28. Dr Chan’s submissions address only the complaints about the ‘cosmetic’ outcomes of the procedures in respect of which charges have been laid. He does not address other, fundamental, concerns around the alleged failures to obtain any adequate consent, a lack of explanation being given about procedures to be undertaken, alleged failures to take a

detailed medical history, about his anaesthetic practices, and post operative care. Further, Dr Chan appears to lack insight about the seriousness of the allegations and charges laid against him, and the harm by way of pain and suffering he may have caused to his patients.

29. For all of these reasons, the Tribunal is satisfied that it should not revoke the suspension order at this time. In coming to this decision, the Tribunal emphasises that it is not making any judgment or decision about the ultimate outcome of any of the charges. However, it is satisfied that it continues to be in the public interest that Dr Chan's registration be suspended pending the determination of these present charges.
30. The Tribunal's decision is unanimous.

Orders

31. The Tribunal orders as follows:
- (a) The application for revocation of the order suspending Dr Chan's registration until the disciplinary proceedings in respect of which a notice of amended charge has been issued have been determined, is dismissed.
 - (b) The Tribunal's order that Dr Chan's registration is to be suspended until these proceedings are determined remains in force.

DATED at Wellington this 1st day of March 2002

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W N Brandon

Chair

Medical Practitioners Disciplinary Tribunal