



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: 220/01/88C
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 formerly of
Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Ms P Kapua (Chair)
Dr F E Bennett, Dr J C Cullen, Dr R S J Gellatly, Mrs H White
(Members)
Ms G J Fraser (Secretary)
Mrs G Rogers (Stenographer)

Hearing held at Auckland on Monday 17, Tuesday 18, Wednesday 19
and Thursday 20 June 2002

APPEARANCES: Ms K G Davenport for a Complaints Assessment Committee ("the CAC")

Mr B A Corkill (Legal Assessor)

No appearance by Dr W W N Chan.

Supplementary Decision

This supplementary decision should be read in conjunction with Decision No. 212/01/88C ("the Substantive Decision") dated 1 November 2002.

1. In the Substantive Decision, this Tribunal found Dr Chan guilty of professional misconduct in respect of his treatment of three complainants and guilty of conduct unbecoming a medical practitioner, and that conduct reflects adversely on his fitness to practise medicine, in relation to his treatment of four other complainants. In keeping with usual practice, details of the facts and circumstances giving rise to the charges, together with the Tribunal's findings and reasons are all contained in the Substantive Decision.
2. In relation to his treatment of one complainant, Dr Chan was found not guilty. Dr Chan had been charged at the level of disgraceful conduct, the most serious of the range of professional disciplinary offences, in respect of his treatment of five of the eight complainants. He was charged with professional misconduct in respect of one complainant and charged at the level of conduct unbecoming in respect of the remaining two complainants. The CAC had also charged Dr Chan at the level of disgraceful conduct in respect of a composite charge that included the particulars of each individual charge. For the reasons set out in its Substantive Decision, the Tribunal dismissed that charge.

3. The Tribunal has taken into account the level at which the charges were made and the basis on which the Tribunal is satisfied they were established, in determining appropriate penalties in respect of each of the relevant charges. The Tribunal has approached the imposition of penalty on each of the charges separately and cumulatively, as it considers appropriate.
4. Submissions were received from Counsel for the CAC in relation to penalty and no response has been received from or on behalf of Dr Chan in relation to penalty.

Submissions on Penalty on Behalf of the CAC

5. For the CAC, Ms Davenport seeks an order that Dr Chan be suspended for a period of 12 months in respect of each of the charges on which he has been found guilty of professional misconduct and that the order of suspension is to run consecutively, rather than concurrently. Further, Ms Davenport seeks on behalf of the CAC, that when Dr Chan resumes practice, he should do so for the following three years, on the following conditions.
 - (a) *“That he at all times employ a fully qualified anaesthetist to monitor patients undergoing any procedure in his rooms.”*
 - (b) *“That he not be allowed to operate on any patient until he and the patient has certified that he has explained the risks and the benefits of the operation to them and that those risks and benefits are clearly outlined in a unique document for every patient.”*
 - (c) *“That he be required to attend such continued medical education courses on consent, patient and practice management as the Medical Council in its sole discretion determines is appropriate.”*
6. The Complaints Assessment Committee also seeks an order that Dr Chan be censured and that he be fined the sum of \$15,000. Finally the CAC seeks an order that Dr Chan pay 45% of the CAC’s costs of investigation and the cost of the hearing.

7. In her submissions, Ms Davenport states that, this is the fifth time that Dr Chan has been found guilty of professional misconduct or conduct unbecoming and in her submission “*the award of costs and fine must reflect the Tribunal’s views that Dr Chan does not appear to have learned from the penalties already imposed by the Tribunal and a fine at the top end of the maximum scale and costs in the range of 45-55% would be a fair reflection of the Tribunal’s displeasure in his actions.*”
8. There have been no submissions in response from Dr Chan or by any person on his behalf.

Decision

9. The Tribunal has reviewed its Substantive Decision and has considered the submissions given on behalf of the CAC. The Tribunal has also had the benefit of hearing evidence from seven of the eight complainants in person and a telephone link with the eighth complainant.
10. In assessing the options on penalty provided for in section 110 of the Act, the Tribunal has approached the task of imposing penalty mindful of its principle purpose in section 3 which is “*to protect the health and safety of members of the public by prescribing or providing for mechanisms to ensure that medical practitioners are competent to practise medicine.*” The Tribunal is also mindful of the importance of the public interest generally. In its consideration, the Tribunal has identified the following matters as relevant:
 - (a) Requirement to protect the health and safety of members of the public;
 - (b) the role of the Tribunal in setting standards: *B v Medical Council* (High Court, Auckland, 11/96 8 July 1996);
 - (c) the degree to which Dr Chan’s conduct fell below acceptable, professional standards. The Tribunal acknowledges that it has considered this matter in terms of the relevant standards that were acceptable at the time, particularly given that the complaints span a seven year period;

- (d) the need for penalty to be appropriate to the circumstances of the case and the role of penalty in terms of punishment and to act as a deterrent; and
 - (e) other legitimate considerations such as the need to maintain public trust and confidence in the medical profession and the degree to which Dr Chan's actions have brought about an adverse reaction to his professional colleagues and peers.
11. Having taken into account all of these matters and having reviewed its findings made in the Substantive Decision, the Tribunal is satisfied that the following penalty is appropriate:
- (a) **Censure:** The Tribunal is satisfied that it is appropriate that Dr Chan should be censured on each charge; that is three complaints of professional misconduct and four complaints of conduct unbecoming and these incidents should be recorded against his professional registration.
 - (b) **Fine:** The Tribunal considers that it is appropriate to impose a fine in relation to the charges. Given the number of charges that have been upheld, the Tribunal considers that a collective fine of \$15,000 of a maximum of \$20,000 on each charge is fair and reasonable in the circumstances.
 - (c) That Dr Chan be suspended from practice for a period of 12 months on each of the charges of professional misconduct. These three suspension periods are to run consecutively. In other words Dr Chan is suspended from practice in total for a period of 36 months.
 - (d) **Conditions:** On resumption of practice after the 36 month period, the Tribunal is satisfied that, given the nature of the charges, it is both appropriate and necessary to impose the following conditions:
 - That Dr Chan has a fully qualified anaesthetist present when he undertakes any surgical procedure.

- That Dr Chan is required to attend medical education courses on consent and patient and practice management at the direction of the Medical Council.

These conditions of practice will remain in place for three years.

- (e) **Costs:** The Tribunal is satisfied that it is appropriate to order that Dr Chan should contribute to the costs and expenses of and incidental to the CAC's inquiry and prosecution and the Tribunal's hearing. Dr Chan chose not to be represented at the hearing and that choice has increased the costs of the hearing with the need for interlocutory applications such as discovery and the costs of ensuring that Dr Chan has received relevant documents relating to the charges. As was submitted by Counsel for the CAC, the Tribunal considers that Dr Chan should pay 45% of the CAC's costs of investigation and the cost of the hearing.

Orders:

For the reasons set out above, the Tribunal orders as follows:

- (i) Dr Chan is to be censured in relation to each of the seven charges.
- (ii) Dr Chan is to pay a fine of \$15,000.
- (iii) Dr Chan is suspended for a total period of 36 months being 12 months on each of the three professional misconduct charges. Each period is to be served consecutively.
- (iv) Following the 36 month suspension, Dr Chan is to practise medicine for the following three years only in accordance with the conditions set out in paragraph 11(d) of this decision.
- (v) Dr Chan is to pay 45% of the costs of the CAC investigation and prosecution and the Tribunal's hearing.
- (vi) A report of the Tribunal's Substantive Decision and this Decision is to be published in the New Zealand Medical Journal.

- (vii) Publication of the names of the complainants, witnesses and any other third parties involved in the hearing of the charges laid against Dr Chan is prohibited except in relation to Ms L Clements and subject to any individuals right to waive suppression of their own identity but not the identity of any other person whose identity may not be published or otherwise disclosed by this order.

DATED at Wellington this 18th day of December 2002

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P Kapua

Deputy Chair

Medical Practitioners Disciplinary Tribunal