



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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**PUBLICATION OF
THE NAME OF THE
PRACTITIONER AND
ANY DETAILS WHICH
MAY IDENTIFY HIM
ARE PROHIBITED** **DECISION NO:** 226/02/95C
IN THE MATTER of the Medical Practitioners Act
1995

-AND-

IN THE MATTER of a charge laid by a Complaints
Assessment Committee against “C”
medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

Introduction

1. On 1 September 2003 Dr C applied for an adjournment of the hearing of the charge laid against him by a Complaints Assessment Committee. The hearing of the charge is scheduled to commence on 22 September 2003.
2. The charge is very serious. It alleges Dr C is guilty of disgraceful conduct in a professional respect. The notice of charge alleges Dr C had sexual intercourse with a sixteen year old patient and supplied her with illicit drugs. The gravity of the allegations cannot be understated. The charge contains by far the most serious allegations against any doctor in New Zealand awaiting determination by the Tribunal. Whether the charge can be made out or not is of course another question about which the Tribunal has no view.

3. The charge was lodged with the Tribunal on 1 October 2002. On receiving the charge the Tribunal arranged a directions conference to, inter alia, set a date for the hearing of the charge. The directions conference was held on 4 November 2002. At that directions conference the parties agreed that the hearing of the charge would take place in Christchurch on 3 and 4 February 2003. The Tribunal convened a panel of three doctors and a lay person as well as the chairperson to hear the charge.
4. A further directions conference was held on 23 December 2002. During that conference counsel for the parties indicated some difficulties were being experienced in relation to discovery but that they hoped they would be able to resolve those matters without the need for formal orders. However it was apparent that discovery issues would not be resolved in sufficient time to enable the hearing to proceed on 3 and 4 February. A new hearing date was set for 18 and 19 March. Again, the Tribunal secretariat arranged for a Tribunal to convene in Christchurch to hear the charges on 18 and 19 March. These arrangements included the booking of a hearing room.
5. On 13 February 2003 Dr C sought urgent orders concerning discovery and disclosure of documents. To accommodate the parties a telephone conference was convened on 14 February 2003 at which the parties sought rulings concerning disclosure of documents held by the Complaints Assessment Committee and medical records relating to the complainant. Orders were made by the chairperson of the Tribunal substantially in accordance with the request made by counsel for Dr C.
6. The Complaints Assessment Committee appealed the orders made on 14 February. Because that appeal could not be heard before 18 March it became necessary to adjourn the Tribunal's hearing. A new hearing date of 30 June and 1 July was set by the Tribunal.
7. The appeal was heard by the District Court on 3 June.
8. A further directions conference was convened by the chairperson of the Tribunal on 11 June when further dates for hearing the charge were set. The new hearing date was to be 22 to 24 September.

9. On 4 August 2003 the District Court's decision was delivered. It would appear from the decision that on appeal to the District Court the Complaints Assessment Committee raised for the first time issues about the chairperson's jurisdiction to make the orders delivered on 14 February. The District Court referred the case back to the Tribunal for reconsideration.
10. On 6 August 2003 the Tribunal wrote to the parties and asked them to advise by 11 August whether or not they had reached agreement on the issue of discovery and if not, whether or not they would attend a further directions conference. In the meantime, the Tribunal responded to the District Court judgment by formally delegating to the chairperson of the Tribunal authority to determine issues relating to discovery in this case. That authority was delegated to the chairperson by the Tribunal appointed to hear the charge against Dr C. The delegation to the chairperson by the other members of the Tribunal was made pursuant to clause 5(1)(a) of the First Schedule of the Medical Practitioners Act 1995.
11. The parties apparently did not reach agreement on discovery, nor did they respond to the Tribunal's request that they attend a further directions conference.
12. It would appear that the Complaints Assessment Committee has now appealed the District Court judgment of 4 August, and that the High Court cannot hear that appeal before 22 September.
13. Dr C's application for an adjournment of the hearing scheduled to commence on 22 September was forwarded by the Tribunal to counsel for the Complaints Assessment Committee. Counsel for the Complaints Assessment Committee responded to the Tribunal on 5 September saying, inter alia:

"Below is the earlier email correspondence I have forwarded to you which records that we agree with Mr Waalkens' assessment in respect of the need for the hearing to be adjourned. Neither the complainant nor I understand Dr C's decision that the substantive hearing be adjourned".

14. The last sentence in the email forwarded by Mr Lange is perplexing. It is obvious Dr C wishes to have the hearing adjourned because he has not had access to the documents he believes exists which may enable him to prepare his defence to the charge.

15. There is no alternative other than to adjourn the hearing scheduled to commence on 22 September. This is the third time the hearing of the charge against Dr C has had to be adjourned.

16. The Tribunal's commitments are such that there is a remote prospect that this case can be heard during the week of 15 December. If the case is not heard then it is unlikely to be heard until April 2004. The Tribunal is very perturbed that a case which involves such serious allegations will remain unresolved for an unacceptable period of time.

DATED at Wellington this 8th day of September 2003

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D B Collins QC
Chair
Medical Practitioners Disciplinary Tribunal