

Medical Practitioners Disciplinary Tribunal

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DECISION NO: 35/97/15C

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

DALUWATUMULLE

GAMAGE RAVINDRA

RAMYASIRI medical
practitioner of Levin

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mr P J Cartwright (Chair)

Dr F E Bennett, Dr J C Cullen, Dr D C Williams,

Ms S Cole (Members)

Ms G J Fraser (Secretary)

Ms K G Davenport (Legal Assessor)

Mrs G Rogers (Stenographer)

Hearing held at Palmerston North on Thursday 16 April 1998

APPEARANCES: Ms K McDonald for the Complaints Assessment Committee ("the CAC").
Mr C J Hodson for Dr D G R Ramyasiri ("the respondent").

1. PARTICULARS OF CHARGE:

DR Ramyasiri was charged by a Complaints Assessment Committee pursuant to section 93(1)(b) of the Medical Practitioners Act 1995 ("the Act") that:

"On or about the 10th day of February 1996 he was convicted by the High Court in Palmerston North of the following offences as set out in the attached certificate of conviction dated 5th May 1997 signed by the Deputy Registrar of the High Court at Palmerston North;

1. On the 24th day of March 1988 at Levin indecently assaulting XXXX [name suppressed] a woman then over the age of 16 years
2. On the 24th day of March 1988 at Levin of sexually violating XXXX by unlawful sexual connection with her, occasioned by the penetration of her vagina by his finger otherwise than for bona fide medical purposes
3. Between the 11th April 1991 and 31st May 1993 at Levin indecently assaulting XXXX [name suppressed] a girl then aged between 12 and 16 years by fondling and caressing her breasts

and the circumstances of the offences reflect adversely on the practitioner's fitness to practice medicine being disgraceful conduct in a professional respect."

2. AGREED SUMMARY OF FACTS:

2.1 IT states as follows:

"Complaint By A:

Offences of Indecent Assault and Sexual Violation

The complainant was a patient of Dr Ramyasiri, and at the time of these offences was aged 19 years.

During the afternoon of Thursday 24 March 1998 the complainant visited Dr Ramyasiri at his surgery at 50 Queen Street, Levin.

The complainant spoke to Dr Ramyasiri of concerns she had about feeling tired and unwell, and having a sore throat, and asked whether she might be having a recurrence of glandular fever.

Dr Ramyasiri examined the complainant's throat using a tongue depressor. He then had the complainant sit on his examination bed, and had her undo the buttons of her blouse and undo her bra. Dr Ramyasiri placed his stethoscope on her bare chest a number of times, and on her back.

While the complainant was still unclothed Dr Ramyasiri moved his face towards the complainant so that his cheek was touching her breast. The complainant moved back, away from him, but Dr Ramyasiri moved forward and again touched his face to her breast. The complainant described the touching as a brushing motion lasting 4 or 5 seconds each time.

The complainant then pulled back, pulled her blouse back over her shoulders, and refastened her clothes.

Dr Ramyasiri then said he wanted to feel if her glands were enlarged and asked the complainant to lie down on the bed, which she did. He began lightly stroking her upper inner thighs using both hands, then he placed the fingers of one hand inside the leg opening of her underpants, and pushed a finger inside her vagina.

The complainant was shocked. She had been looking away, but she turned to look at Dr Ramyasiri and saw he was smiling. Dr Ramyasiri then withdrew his hand and turned away from her.

Nothing was said by either the doctor or the complainant at the time of the incident, and the complainant left the surgery soon afterwards. She was upset to the extent she had difficulty driving herself home and had to stop. Once at home she could not explain to her husband what had occurred other than to say that something had happened.

2.2 Complaint by T:

Offence of Indecent Assault

Dr Ramyasiri was the family doctor of this complainant. When the complainant was 13 years old, a third form student, she saw Dr Ramyasiri a number of times for treatment of a verruca on her foot. Her father was present during those visits. During one of those visits Dr Ramyasiri offered the complainant a part-time job cleaning his surgery, which she accepted.

She performed the cleaning duties on Sundays, and her position developed to include casual receptionist work for Dr Ramyasiri when he was duty doctor, outside the normal surgery hours.

Shortly after the complainant started working for Dr Ramyasiri her parents separated and her father left home. Dr Ramyasiri offered his help to the complainant during this difficult time, and said he could be a father figure for her.

As a member of staff the complainant received free consultations from Dr Ramyasiri. During her employment Dr Ramyasiri examined her for various minor medical matters, and he became aware the complainant had one breast larger than the other.

One day when the complainant was performing her cleaning duties Dr Ramyasiri discussed this matter with the complainant, saying he should take a look at it for her. There was no-one else at the surgery at this time. He told the complainant to remove her top and bra, and had her stand facing a mirror in his consulting room. Dr Ramyasiri then stood behind the complainant, put his arms around the complainant's sides and touched her breasts with his hands, using gentle caressing movements. Dr Ramyasiri was watching in the mirror while he was doing this. Dr Ramyasiri continued touching the complainant's breasts in this way until she cut off the incident by saying she had to get home. The complainant was uncomfortable with the situation and wanted to leave.

This incident occurred when the complainant was 14 or 15 years old, between the dates of April 1991 and 31 May 1993."

3. THE CONVICTION:

3.1 ON 10 February 1997 Dr Ramyasiri was tried by jury in the High Court at Palmerston North.

He was convicted of three charges against the Crimes Act 1961 namely:

Section 135(a) Indecent Assault (19 year old);

Section 134(2)(a) Indecent Assault (15 year old);

Section 128(1)(b) Sexual Violation.

3.2 DR Ramyasiri was sentenced by Justice Gendall on 7 April 1997. In respect of the indecent assault on the 19 year old girl he was sentenced to a term of imprisonment of 1½ years. In respect of the indecent assault on the 15 year old girl he was sentenced to a term of imprisonment of 1½ years. In respect of the sexual violation he was sentenced to a term of imprisonment of 2 years.

All terms to be served concurrently.

4. EVIDENCE:

4.1 DR Ramyasiri is 55 years of age and has been a medical practitioner in general practice in Levin since July 1975. He is married with one son who is currently a trainee intern at Waikato Hospital. Dr Ramyasiri and his wife immigrated to New Zealand from Sri Lanka in 1974. His wife is a registered general nurse and works as his practice manager and part-time receptionist.

4.2 IN 1980 he completed a diploma in obstetrics at Auckland University and in 1984 gained membership of the Royal New Zealand College of General Practitioners.

4.3 HE gave up active obstetrics practice to reduce his workload in 1992.

4.4 HIS main interests revolve around the Levin Chapter of the Rotary Club and the Sri Lankin Association.

4.5 REGARDING the convictions Dr Ramyasiri explained:

"I acknowledge the stress that the two consultations and the rigours of giving evidence at a High Court trial have caused my two female patients, one of whom did so at both my trials.

I accept responsibility for the complaints arising from the consultations and the three convictions, two for indecent assault and one for sexual violation, that followed. I performed intimate examinations on young female patients after hours without a chaperone being present, and also gave sex education and contraception advice to a 15-year-old girl in similar circumstances. I wish to add that I have no recollection of the earlier of the two consultations in question, though I accept that no chaperone was present."

4.6 DR Ramyasiri went on to explain in some detail about both the circumstances of the complaints and the complainants themselves. So far as the Tribunal is concerned the record of the convictions is really all that matters. Possible aspects in mitigation will be addressed later.

4.7 NEEDLESS to say the experience has been devastating for Dr Ramyasiri. He claims *"I have been ruined professionally and financially"*. He has served his term of imprisonment and on a more positive note he is resolved to look to the future.

4.8 INCLUDED in his hopes for the future is a strong desire to continue to serve his community, which has been very supportive of himself and his family, for some years yet. He has tried to keep himself current in medicine by reading journals and by attending peer-group meetings with

colleagues. It is his longer-term aim to resume general practice, but he would not wish to be in sole practice again.

4.9 DR W J Davenport, a colleague of Dr Ramyasiri for some 20 years, expressed a wish that the Tribunal permit Dr Ramyasiri to continue to contribute his professional expertise to the health care of the community. Dr Davenport explained that in his opinion Dr Ramyasiri's level of general medical competence puts him in the top 10% of the practitioners whose work he has been able to observe at close hand over the last 20 years. Moreover in Dr Davenport's opinion Dr Ramyasiri has consistently exhibited an extremely high level of concern and compassion for his patients as individuals.

4.10 LIKEWISE Dr D J Bolitho spoke in support of Dr Ramyasiri. Dr Bolitho has been a resident of Levin for the past 27 years and has known Dr Ramyasiri as a medical colleague since 1975.

Dr Bolitho explained:

"I am in no doubt whatsoever that he will not re-offend, and will through practice organisation be much more cautious and controlling of stress factors in the future. He is a very competent practitioner and will have no medical difficulty in resuming practice of a good standard."

5. TESTIMONIALS:

IN addition to the supportive evidence of Drs Davenport and Bolitho, Mr Hodson provided the Tribunal with copies of Testimonials given by Dr Sewell, a retired medical practitioner of Levin, Abbot Bhikkhu Vajiro, and several other persons including Lil Garland, Deputy Principal, Palmerston North Girls High School. Finally Mr Hodson tendered a petition addressed to the

Tribunal which had been signed by approximately 400 former patients of Dr Ramyasiri. The petition exhorts the Tribunal:

"We, the undersigned, wish to declare our support for Dr. Dalwatumulle Ravindra Gamag Ramyasiri, who now stands before you.

We are all patients of Dr. Ramyasiri at his general practice in Levin. We wish it to be known to the Tribunal that despite Dr. Ramyasiri being found guilty of sexual offences against patients by a Palmerston North High Court jury, we consider him to be an excellent general practitioner. We have always found him to be caring, medically competent and skilful. We have no reservations or fears whatsoever about Dr. Ramyasiri, and sincerely wish him back to practice in Levin. We want to be under his medical care again as soon as possible. We would welcome Dr. Ramyasiri back in our midst, as would the Levin community in general.

We earnestly entreat the Tribunal take due heed of the support demonstrated by this petition when deciding on the sanctions it imposes on Dr. Ramyasiri."

6. SUBMISSIONS:

6.1 IT was Ms McDonald's principal submission that the public interest requires that Dr Ramyasiri's name should be removed from the Register under Section 110(1)(a) of the Act. Expanding on this submission, Ms McDonald explained that this was sexual offending of the most serious nature against two complainants who can legitimately be described as young and vulnerable. One complainant was also an employee.

6.2 MS McDonald cautioned the Tribunal against making a determination that Dr Ramyasiri needs only to be prevented from treating young female patients. She said the suggestion that Dr Ramyasiri be permitted to work in a geriatric home would not be appropriate because the nature of the offending in this case demonstrates that Dr Ramyasiri is prepared to prey on the vulnerable patient.

6.3 IN summary it was submitted by Mr Hodson that Dr Ramyasiri should be returned to practice subject to conditions of continuing consultation with advisors as may be required and that he otherwise practise under supervision whether in general practice or in employment as may from time to time be approved, the Tribunal to be furnished with appropriate reports at six monthly intervals. Mr Hodson recommended that Dr Ramyasiri's rehabilitation be reviewed in December 1998 being twelve months from his original suspension.

7. INTERIM PENALTY ORDERS:

7.1 DR Ramyasiri's registration as a medical practitioner is suspended for a period of eight months from 16 April 1998. This period of suspension is in addition to the Order of interim suspension which was imposed on 11 December 1997.

7.2 DR Ramyasiri may, for a period not exceeding three years, practise medicine only in accordance with such conditions as to employment, supervision or otherwise as are specified by the Tribunal in a final Order which will issue prior to expiry of the period of further suspension ordered in paragraph 7.1 above.

7.3 DR Ramyasiri is censured.

7.4 DR Ramyasiri pay 50% of the costs of expenses of and incidental to the inquiry by the CAC, the prosecution of the charge by the CAC and the hearing by the Tribunal.

7.5 PUBLICATION in the New Zealand Medical Journal pursuant to Section 138(2) of the Act.

8. REASONS FOR ORDERS:

8.1 THE Tribunal considers that removal of Dr Ramyasiri's name from the Register, although a strong option as was submitted by Ms McDonald, is not warranted in this case. Striking off is viewed by the Tribunal as an option of last resort when, for example, it may be considered that the doctor is incapable of rehabilitation.

8.2 THE Tribunal must also have regard to the need to protect the health and safety of members of the public. As was stated in *Re a Medical Practitioner* [1959] NZLR 784 by Gresson P:

"... the primary purpose of such domestic tribunals and the powers given to them, is to ensure that no person unfitted because of his conduct should be allowed to continue to practise the profession or to follow the particular calling"

8.3 IT is not the function of the Tribunal to punish. The exercise of its powers is not by way of punishment but rather to enforce a high standard of propriety and professional conduct.

8.4 THE Tribunal had placed before it a copy of Justice Gendall's sentencing notes. He accurately referred to what he described as a flaw in the doctor's character, something which he described as a *"trait of salaciousness"*. For what Justice Gendall also described as *"... a serious breach*

of trust", Dr Ramyasiri has served a term of imprisonment. The Tribunal hopes the prosecution's fear that Dr Ramyasiri *"is prepared to prey on the vulnerable patient"* proves groundless.

8.5 MR Hodson submitted *"... there is no likelihood of re-offending"*. While the Tribunal is unable to be so categorical, it is prepared to give Dr Ramyasiri the benefit of any doubt, that the risk of re-offending appears to be extremely low, to the point of being quite unlikely.

8.6 DR Ramyasiri can be chastened by the support of his community, to an extent probably unprecedented in a case of this nature. Gendall J gave due weight to the character witnesses, the testimonials and the tremendous support of the community but he was unable to allow their opinions to detract from the jury's verdict. The function of the Tribunal in the imposition of penalties is such that it is permitted to take into account the obvious groundswell of community opinion which exists to support Dr Ramyasiri. However he cannot afford to jeopardise that goodwill in any possible way. For these reasons the Tribunal has elected not to remove Dr Ramyasiri's name from the Register. Mr Hodson submitted that suspension compounds any financial problems and does little towards re-introduction to practice. The Tribunal needs to explain that the further period of suspension is not intended to be punitive. Its purpose is primarily to assist Dr Ramyasiri in his continuing and on-going rehabilitation, as well as to underline the seriousness and complete unacceptability of Dr Ramyasiri's professional sexual misconduct.

8.7 PLACED before the Tribunal was a report from V F W Soeterik, a consulting and clinical psychologist. He has seen and examined Dr Ramyasiri on a number of occasions since 22 September 1997. Although Mr Soeterik is not on the approved list of assessors (of the Medical

Council of New Zealand) for the treatment of doctors found guilty of sexual misconduct, he has indicated to the Tribunal that Dr Ramyasiri is prepared to embark on the programme.

8.8 THE Tribunal records an undertaking given by Dr Ramyasiri (through Mr Hodson) to the Tribunal, that he agrees to submit himself for referral and be bound by the Medical Council's Assessment and Rehabilitation Programme. Although at the time the Chair may not have made it entirely clear to Mr Hodson, the Tribunal's intention was always that Dr Ramyasiri would enter the Council's Assessment and Rehabilitation Programme. The time frame of the programme is understood to be 6-8 weeks. To facilitate entry of Dr Ramyasiri into the programme, in an unhurried manner without the distractions of re-establishing in a medical practice environment, is a primary reason for imposition of the further period of suspension.

8.9 IT will be noted that the Tribunal has postponed the imposition of actual conditions of practice following expiry of the further period of suspension. In so doing it is the intention of the Tribunal that it will receive a copy of the Assessment and Rehabilitation Programme Report. The Tribunal considers it will then be able to take the assessor's recommendations into account when formulating precise conditions of practice.

8.10 NOTED at this stage is Dr Ramyasiri's current wish not to return to private practice, and the existence of possible non-private practice options such as his employment in a war veteran's home.

8.11 IN making the orders involving Dr Ramyasiri the Tribunal has attempted to blend the principles of denunciation of the offending behaviour, with protection of the public and rehabilitation of the medical practitioner.

8.12 THAT Dr Ramyasiri be censured is an inevitable outcome of the disciplinary process.

8.13 LIKEWISE that Dr Ramyasiri be made responsible for a contribution of 50% towards the reasonable costs and expenses of and incidental to prosecution of the charge and its hearing by the Tribunal, is also unavoidable. The Tribunal acknowledges that the costs orders will have a severe effect in this case.

8.14 THE underlying principle of decided cases is "What is a reasonable contribution to costs in the particular circumstances".

8.15 IN the past the Medical Practitioners Disciplinary Committee and Medical Council routinely applied a percentage approach, based on a global summary of the costs of prosecution and the costs of the relevant body. The High Court regularly approved this approach. A number of cases illustrating this approach are conveniently gathered in *Cooray v Preliminary Proceedings Committee* (Wellington Registry, AP23/94, Doogue J, 14.9.95). From p4 onwards, the Court summarised dicta in various cases as follows:

(a) ***O'Connor:***

"It is a notorious fact that prosecutions in the hands of professional bodies, usually pursuant to statutory powers, are very costly and time consuming to those bodies and such knowledge is widespread within the professions so

controlled. So as to alleviate the burden of the costs on the professional members as a whole the legislature had empowered the different bodies to impose orders for costs. They are nearly always substantial when the charges brought are successful and misconduct admitted or found."

(b) **Vasan:**

"... the choice is between appellant who was ultimately found guilty of serious misconduct in his practice, and the medical profession as a whole. The Council considered a fair division was a near equal split of the total between appellant and the profession as represented by the Council and despite the punitive aspects as well as the hardship we do not believe the Council erred."

(c) **Tizard:**

"The Court recognises that the disciplinary work of the Council is important, that the Council is not a 'funded tribunal', and that it is appropriate that the medical profession recover, when possible, a reasonable contribution towards the costs of carrying out its work."

Doogue J concluded in *Cooray's* case:

"It would appear from the cases before the Court that the Council in other decisions made by it has in a general way taken 50% of total reasonable costs as a guide to a reasonable order for costs and has in individual cases where it has considered it is justified gone beyond that figure."

8.16 DETAILS of the make up of the costs of the CAC and of the Tribunal have been provided to counsel for comment and nothing adverse has been forthcoming.

DATED at Auckland this 14th day of May 1998

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P J Cartwright

Chair

Medical Practitioners Disciplinary Tribunal