

Medical Practitioners Disciplinary Tribunal

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DECISION NO.: 34/98/21C

IN THE MATTER of Section 104 of the Medical
Practitioners Act 1995

AND

IN THE MATTER of disciplinary proceedings against
GARRY JAMES PROCKTER
medical practitioner of Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Thursday 9 April 1998

PRESENT: Mr P J Cartwright - Chairperson
Dr B D Evans, Dr J M McKenzie,
Associate Professor Dame N Restieaux, Ms S Cole (Members)

DECISION ON APPLICATION FOR INTERIM SUSPENSION OF REGISTRATION:

1.1 A Complaints Assessment Committee ("CAC") pursuant to Section 93(1) of the Medical Practitioners Act 1995 ("the Act") has charged Dr Prockter that on or about the 17th day of October 1996 he was convicted by the High Court in Auckland of the following offences each being an offence punishable by imprisonment for a term of three months or longer:

1. Sexual violation, section 128 Crimes Act 1961 (3).
2. Attempted sexual violation, section 129 Crimes Act 1961 (4).
3. Indecent assault, section 140 Crimes Act 1961 (2).
4. Indecent assault, section 140 Crimes Act 1961 (8).
5. Indecent assault, section 140 Crimes Act 1961.

and the circumstances of the offences reflect adversely on his fitness to practice medicine.

1.2 AN appeal against conviction and sentence was dismissed by the Court of Appeal (*R v Procktor*, CA 18/97 21 October 1997). The result is that Dr Prockter was sentenced to an effective term of nine years three months imprisonment.

1.3 THE CAC has recommended to the Tribunal that pending determination of the charge, the registration of Dr Prockter be suspended pursuant to Section 104 of the Act.

1.4 RELEVANTLY summarised Section 104 of the Act provides that at any time after notice of disciplinary proceedings have been given 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, the registration of that medical practitioner be suspended.

1.5 SUB-SECTION 3 of Section 104 provides that the Tribunal shall not be obliged to give any notice to a medical practitioner that it intends to make an interim suspension of registration order.

Nonetheless notice to this effect was given to Dr Prockter by letter dated 2 April 1998. Dr Prockter's letter of response to the Secretary dated 5 April 1998 intimated, inter alia:

"The reason for requesting this [interim suspension] is unclear to me as I am unable to practise medicine at all in my present circumstances nor constitute a danger to the public with reference to provision 104. I am not guilty of the crimes alleged."

2.0 ORDER:

UNTIL the charge against Dr Prockter has been determined, that his registration as a medical practitioner be suspended pursuant to Section 104 of the Act.

3.0 MAJORITY STATEMENT OF REASONS FOR ORDER:

3.1 IN its letter of 26 March 1998 which accompanied the charge laid before the Tribunal the CAC recommended interim suspension of Dr Prockter because, given the nature of the offences, Dr Prockter should not be in a position to practise medicine if he were, for instance, released on probation while the Tribunal was still considering the charges.

3.2 MR McClelland submitted on behalf of the CAC that it is necessary and desirable for the interim suspension of registration to be imposed on Dr Prockter due to the extremely serious nature of

the charge brought against him and the associated need to protect the health and safety of members of the public.

3.3 MR McClelland explained of grave concern to the CAC is the observation by the Court of Appeal at page 7 of its judgement that:

".... the appellant (Dr Prockter) continues to deny any criminal responsibility for his actions. The consequences for the victims have been understandably severe, although the sentencing Judge was careful to record that the problems suffered by them cannot all be blamed on the appellant's abuse ... Nevertheless these were serious breaches of trust, and some of the offences could properly be described as instances of serious abuse."

3.4 MR McClelland further submitted:

3.4.1 THE fact that Dr Prockter has refused to acknowledge his wrongdoing and that he persists in denying all offending indicates that he has not accepted the seriousness of the situation and lacks insight into his offending and the impact that his conduct has had on his victims.

3.4.2 THE offences for which Dr Prockter has been convicted were conducted against children/young males, involved serious breaches of trust and in some cases incurred in the context of his medical practice.

3.4.3 DR Prockter's lack of insight into his offending means that there is a potential serious risk to the public if he is released. While he is sentenced to nine years three months imprisonment, an earlier release date is possible and there is no indication that he will

not continue to practise. Indeed given his lack of insight there is every reason to believe that he would commence to practise immediately upon his release.

3.4.4 IN the context of serious offending against children and the breaches of trust involved by Dr Prockter, the CAC is therefore of the view that the Tribunal ought to exercise its power to suspend Dr Prockter from the Register pending the outcome of the charge against him. Such suspension would also mean that he would also not be able to practise medicine while in prison and it is in the public interest that he be restricted in this way.

3.5 DR Prockter was present during the conference call for this hearing. He reiterated, although he considers his imprisonment was completely unjustified, that he had given an undertaking to the authorities not to practise medicine while in prison.

3.6 FOR all the reasons advanced by Mr McClelland, the majority considers that it is appropriate to make the Order sought. In so doing a minority opinion is recorded. One member did not believe interim suspension was necessary, as Dr Prockter is no threat to public safety, especially given the impossibility of his being placed on parole before June.

DATED this 27th day of April 1998.

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P J Cartwright

CHAIR