

Medical Practitioners Disciplinary Tribunal

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DECISION NO: 90/98/24C

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 **JULIAN**
MEREDITH **CLIVE**
WHITE medical practitioner
of Cambridge

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mr P J Cartwright (Chair)

Dr J C Cullen, Mr G Searancke, Dr A D Stewart,

Dr A F N Sutherland (Members)

Ms G J Fraser (Secretary)

Mrs G Rogers (Stenographer)

Hearing held at Hamilton on 13, 14, 15 October 1998 and 12, 13, 14

December 1998

APPEARANCES: Mr M F McClelland and Ms J Elliott for the Complaints Assessment Committee ("the CAC")
Mr A J Knowsley and Mr K M Eruera for Dr J M C White.

SUPPLEMENTARY DECISION:

- 1.1** **THIS** supplementary decision should be read in conjunction with the substantive decision which was delivered on 24 February 1999 under Decision No. 63/98/24C.
- 1.2** **IN** the substantive decision, having made adverse findings against Dr White in respect of five out of a total of six particulars, the Tribunal determined that he be found guilty of disgraceful conduct in a professional respect.
- 1.3** **THE** delay in issue of this supplementary decision has been occasioned as a result of Dr White facing further charges (the further charges) before the Tribunal in Hamilton on 16 March 1999. Dr White admitted that the facts and particulars of the further charges amounted to either conduct unbecoming a medical practitioner as reflecting adversely on fitness to practise medicine, or professional misconduct. In respect of the further charges the Tribunal determined that, subject to in some instances the amendments made by the Tribunal to certain particulars of the further charges, that the facts had been established to the required standard, that the facts established the particulars of the charges, and that the established particulars

amounted to either conduct unbecoming a medical practitioner so as to reflect adversely on fitness to practise medicine, professional misconduct, or in respect of several particulars of charges, the Tribunal elevated the level of misconduct to disgraceful conduct in a professional respect.

1.4 FOLLOWING delivery of the substantive decision in respect of the further charges, in a supplementary penalties decision which issued on 20 August 1999, it was ordered, inter alia, that Dr White's name be removed from the Register pursuant to Section 110(a) of the Act.

Accordingly Dr White's ability to practise medicine is no longer an issue.

1.5 COUNSEL have filed submissions which the Tribunal has taken into account in assessing penalties, in respect of which this supplementary decision issues. As well we have had regard to three specialist medical reports which the Tribunal requisitioned on Dr White following the hearing into the further charges.

1.6 THE matters we are now required to consider relate to imposition of penalties under Section 110 of the Act.

2. CENSURE:

2.1 THE charge of which Dr White has been found guilty is very serious. It must follow that an official expression of disapproval of his conduct must be made by the Tribunal.

2.2 ACCOMPANYING this censure is the following warning to the medical profession:

A doctor should not enter into any financial arrangement with any patient above and beyond the fees he/she is entitled to charge for his/her professional services.

3. FINE:

- 3.1** **UNDER** Section 110(1)(e) of the Act the Tribunal may order a medical practitioner to pay a fine not exceeding \$20,000. However, because some of the misconduct under focus pre-dates commencement of the current disciplinary legislation, in this case the maximum fine which the Tribunal can impose is limited to \$1,000.
- 3.2** **GENERALLY** there was agreement among us that more weight should be placed on recovery of some of the considerable expenses which were incurred in both prosecution of the charges and their hearing before the Tribunal.

4. COSTS:

- 4.1** **PURSUANT** to Section 110 of the Act the Tribunal has the power to order Dr White to pay part or all of the costs and expenses of and incidental to the inquiry and hearing.
- 4.2** **THE** costs incurred in this matter, as advised to counsel, amounted to \$119,094.24, apportioned:

Tribunal Expenses	\$47,982.74
CAC Costs	\$71,111.50
TOTAL	\$119,094.24

- 4.3 IN written submissions Mr Knowsley argued that the costs of the CAC and MPDT in prosecuting and hearing the charge are extremely high. To some extent Mr Knowsley is correct in his view that the quantum of costs reflects the fact that an extra particular was added to the charge. Because that extra particular was not sustained, Mr Knowsley submitted that Dr White should receive a substantial discount of any costs award as a result.
- 4.4 WE agree there is some merit in the submission that some discount should be made in respect of the additional particular which, in the end result, was not sustained. Accordingly the sum of \$10,000 has been deducted from total costs of \$119,094.24, reducing that figure to \$109,094.24.
- 4.5 THE principles which applied to the exercise of the Medical Council's powers to make orders as to costs under the 1968 Act are equally applicable to the Tribunal's powers under the 1995 Act. This principle was established by the Tribunal in Decision No. 14/97/3C.
- 4.6 IN *Gurusinghe v Medical Council of New Zealand* [1989] NZLR 139 the appellant medical practitioner had been ordered to pay costs amounting to \$20,000. This sum was approximately half of the actual expenses incurred. The full Court of the High Court held that such a sum was not excessive, and noted that the ordering of payment of costs was not in the nature of a penalty, but rather to enable the recovery of costs and expenses of the hearing.
- 4.7 IN *O'Connor v Preliminary Proceedings Committee* (High Court, Administrative Division, Wellington, 23 August 1990, Jeffries J, CT 280/89) an order for costs of \$50,000 being two-thirds of the actual costs incurred, was upheld. (In that case, as with *Gurusinghe*, the orders

made against the doctor prevented him from practising). Jeffries J acknowledged that orders for costs in this type of proceeding will be substantial and commented that this will be known to any doctor to be so.

5. PUBLICATION OF NAME:

- 5.1** **MR** Knowsley agrees with Mr McClelland that all other persons should have their names and any identifying details permanently suppressed.
- 5.2** IN relation to Dr White, Mr Knowsley explained the medical position is that he is suffering from depression to such an extent that he had to cease practice. Therefore Mr Knowsley urged permanent suppression of Dr White's name.
- 5.3** A similar application made by Mr Knowsley in respect of the subsequent set of charges faced by Dr White, was declined by the Tribunal. Likewise this application for name suppression must be similarly declined. Dr White's current status of removal from the medical Register is already in the public arena. Not to publish his name would act as a disservice to all other doctors practising medicine in the Cambridge area.

6. ORDERS:

FOR the reasons given the Tribunal makes the following orders:

- 6.1** **THAT** Dr White be censured.
- 6.2** **THAT** Dr White contribute \$65,456.00 towards the costs and expense of the inquiry and hearing (approximately 60% of \$109,094.).

6.3 **MADE** final is the interim order made in Decision No. 63/98/24C prohibiting publication of the name and particulars of all patients and complainants.

6.4 **FINALLY** the Tribunal orders publication of the above orders in the New Zealand Medical Journal pursuant to Section 138 of the Act.

DATED at Auckland this 30th day of September 1999

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P J Cartwright

ChairMedical Practitioners Disciplinary Tribunal