

# *Medical Practitioners Disciplinary Tribunal*

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**DECISION NO:** 91/98/38C

**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 **JACOBUS  
PETRUS DE LA PORTE**  
medical practitioner of  
Hokitika

## **BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL**

**TRIBUNAL:** Mr P J Cartwright (Chair)  
Ms S Cole, Dr R S J Gellatly, Dr A F N Sutherland,  
Dr B J Trenwith (Members)  
Ms G J Fraser (Secretary)  
Mrs G Rogers (Stenographer)

Hearing held at Greymouth on Wednesday 24 March 1999

**APPEARANCES:** Mr C J Lange for the Complaints Assessment Committee ("the CAC")  
Mr C J Hodson QC for Dr J P de la Porte.

**SUPPLEMENTARY DECISION:**

- 1.1 A Complaints Assessment Committee (the CAC) charged Dr de la Porte, medical practitioner of Hokitika, that at approximately 4.30 am on Saturday 27 March 1993 at Hokitika he failed to respond appropriately to a request to assist a patient in a medical emergency, that amounting to professional misconduct.
- 1.2 **THE** Tribunal, by its Decision No. 70/98/38C dated 10 June 1999, found Dr de la Porte guilty of conduct unbecoming a medical practitioner which reflects adversely on his fitness to practise medicine.
- 1.3 **THIS** supplementary decision issues for the purpose of determining penalties.
- 1.4 **THE** conduct giving rise to the finding arose in March of 1993, that is prior to the commencement of the 1995 Act, and in such circumstances the provisions of Section 154 of the Medical Practitioners Act 1995 apply.

**1.5** **BY** virtue of Section 154(f) of the Medical Practitioners Act 1995, the penalties available to the Tribunal are those set out in Section 43 of the Medical Practitioners Act 1968, they being as follows:

- (a) Order payment of a penalty not exceeding \$1,000.
- (b) Censure.
- (ba) Impose for a period not exceeding 3 years, such conditions on the right to practise as a medical practitioner as it thinks fit for the protection of the public or in the person's interests.
- (c) Order payment of any costs or expenses of and incidental to the inquiry.

## **2. SUBMISSIONS**

**2.1** **IN** assessing appropriate penalties Mr Lange submitted on behalf of the CAC that the Tribunal should have regard to the following facts:

- (a) Dr de la Porte acknowledged that his understanding was that the complainant was in labour, she having been in labour since midday on 25 March.
- (b) The information conveyed to Dr de la Porte (or his wife) conveyed "*a sense of urgency or emergency surrounding (Ms Stewart's) condition ... that Ms Stewart was on the floor, she was bleeding, she could not move, and if that it was not a gall stone attack, that she was going to have a baby*".
- (c) Dr de la Porte accepted the situation was a medical emergency (refer paragraph 6.10 of Tribunal's Decision.)
- (d) Dr de la Porte acknowledged that his reason was that he was too tired, (refer paragraph 6.9 of Tribunal Decision).

- (e) The effect and mental health consequences to Ms Stewart were detailed at the Tribunal hearing.
- (f) In its decision the Tribunal found that the failure on the part of Dr de la Porte was relatively serious (refer paragraph 6.29 of the Tribunal's Decision).

**2.2** **FINALLY** Mr Lange submitted that irrespective of whether the Tribunal decides to censure Dr de la Porte, that it should make an order for payment of a fine together with an order for payment of costs and expenses.

**2.3** **ON** behalf of Dr de la Porte it was submitted by Mr Hodson:

- (i) The inability of the Tribunal to find that the doctor answered the door in person means that the CAC has not proved that this happened. It follows that on the more favourable interpretation to the doctor, which in these circumstances is his right, the information was conveyed to him second hand. The discussion relating to the degree of emergency is a matter of semantics. The prosecutor was clearly trying to have the doctor admit that he was aware that an emergency situation existed; the doctor accepted this to the extent that any birth situation can appropriately be described as an emergency.
- (ii) The Tribunal made no findings about the effects or consequences on Mrs Stewart; they are not supported by the medical evidence, in particular Grey Hospital notes.
- (iii) The doctor was subject to the stresses of rural practice prior to March 1993. He and his family arrived in New Zealand in April 1992. From that time until 1 February 1993 he worked as the sole doctor in charge of the hospital in Reefton and was the only general practitioner for the town and area. This position meant that he was on call 24 hours per day. There was no relieving doctor during the time he worked at Reefton.

(iv) As to punishment, the salient features are:

- This doctor has completed many years of otherwise blameless service to the people of the West Coast. He has now retired from that practice. He has been very greatly affected by the complaint and the disciplinary process. The effect on him has been real and prolonged and is not yet over.
- The views of the community, to which the Tribunal properly must pay regard, were made clear at the inquiry. While it is understandable that the Tribunal may have been to a degree discomforted by the support for the submission that bygones should be bygones and the matter should be left without penalty, this is nevertheless the view of the community which knows the doctor best.
- There is no requirement for a deterrent sentence either to this doctor or to the profession.
- To impose a fine now, after the doctor has retired, in respect of an event which took place over six years ago, would be inappropriate. To censure the doctor would be to ignore the years of devoted service which he has given.

**2.4** IN acknowledging that there is a liability for costs, Mr Hodson submitted that an appropriate contribution would be 25%, the prosecution having failed to establish professional misconduct. Had it succeeded in this Mr Hodson expressed the view that the rate might well have been 50%.

**2.5** **FINALLY** Mr Hodson submitted there is no requirement for publication in any publication, because in his view the matter has no current relevance and nor is there any issue of public interest. Should the Tribunal wish to make an order under Section 138(2) of the Act, Mr

Hodson made application under Section 106 of the Act for suppression of the doctor's name and particulars leading to his identification.

**3. NAME SUPPRESSION APPLICATION:**

**3.1 OUR** interpretation of Section 138(2) of the Act is that there is no discretion not to publish "*where the Tribunal makes an order under this Act ...*". In that event the Secretary is required "*shall*" to cause a notice to be published in such publication as the Tribunal may order. Accordingly the only discretion available to the Tribunal following the making of an order under the Act, is in which publication the notice will be published. In the exercise of that discretion the Tribunal will include in the orders which follow a direction that there be publication of its orders in the New Zealand Medical Journal.

**3.2 THE** hearing of the charge against Dr de la Porte was held in public, with many members of the public being present. There was no suppression of Dr de la Porte's name. No good reason for suppression of his name at this late point in time has been advanced.

**3.3 THE** application is declined.

**4. ORDERS:**

**AFTER** having due regard to the submissions made by counsel, the Tribunal makes the following orders.

**4.1 THAT** Dr de la Porte be censured.

**4.2 THAT** Dr de la Porte pay a fine of \$350.

**4.3 THAT** Dr de la Porte contribute \$7,401 to total costs of \$29,605.08, a contribution of 25%.

**4.4 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 30<sup>th</sup> day of September 1999

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P J Cartwright

Chair

Medical Practitioners Disciplinary Tribunal