



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO: 165/99/55C

IN THE MATTER of the Medical Practitioners Act
1995

-AND-

IN THE MATTER of charges laid by a Complaints
Assessment Committee pursuant to
Section 93(1)(b) of the Act against
MORGAN FRANCIS FAHEY
former medical practitioner of
Christchurch

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mr G D Pearson (Deputy Chair)

Ms S Cole, Dr R S J Gellatly, Professor W Gillett, Dr L F Wilson
(Members)

Ms Kim Davies (Hearing Officer)

Hearing held at Wellington on Thursday 19 July 2001

APPEARANCES: Mr M F McClelland for a Complaints Assessment Committee ("the CAC")

DECISION ON APPLICATION TO WITHDRAW CHARGES

Name Suppression

1. The Tribunal directs that the names of the Complainants and any information or fact that might identify them are suppressed, that direction includes complainants who are not the subject of the charges.

Application to withdraw charges

2. The Complaints Assessment Committee has applied to withdraw 9 charges that are before the Tribunal.
3. The application by the Complaints Assessment Committee is made having regard to the conviction for disciplinary offences already established against Dr Fahey, not any lack of substance in the pending charges.
4. The Tribunal recognises that withdrawal of charges is primarily an issue for the authority prosecuting the charge. However, the Tribunal does have inquisitorial powers, and does scrutinise applications to withdraw charges. That is primarily because circumstances can arise where a complainant for private reasons does not wish to proceed, and there are public interest issues left outstanding.

5. In the present case dealing with 7 of the charges is in essence a technicality. The Tribunal has already dealt with the substance of those charges. The issue came before the Tribunal on the basis of Dr Fahey having been convicted of Rape, Sexual Violation, and Indecent Assault – and that the circumstances reflected adversely on his fitness to practise medicine. That charge was found established on a guilty plea.
6. The issue was brought before the Tribunal on the basis that Dr Fahey’s offending occurred over a period of 31 years, that Dr Fahey was a sexual predator who preyed on female patients, and that he exploited vulnerabilities in those patients.
7. The Tribunal found that Dr Fahey’s offending was at the highest end of the scale for sexual offending by a practitioner. Without attempting to comprehensively catalogue Dr Fahey’s behaviour, we record that the Tribunal found:
 - The offending was gross conduct of the worst kind, extending to raping a patient in his surgery when she consulted him about her pregnancy.
 - The victims of Dr Fahey’s offending have, inevitably, suffered serious ongoing problems from Dr Fahey’s offending.
 - Dr Fahey exploited access to patients who were forced to be examined by him as a condition of their employment, and sexually assaulted them.
 - Dr Fahey consciously exploited the respect the Community gave to him as a prominent medical practitioner, and told a patient “*that it was no use telling anyone what happened as she would never be believed*”.
 - Dr Fahey’s sexual abuse and exploitation extended over 3 decades, and involved premeditation, and in many instances attempts to disguise the abuse by asserting it was legitimate medical treatment.
 - When sentenced in the High Court, the Court observed that Dr Fahey had no real insight into the impact of his offending on the women involved.

- This Tribunal observed it was concerned that “*Dr Fahey seems still unable to take personal responsibility for his improper conduct, but may still be seeking that others take responsibility for imposing boundaries or disclosing improper conduct*”.
 - The Tribunal further observed that Dr Fahey’s offending was brought to an end by disclosure on the part of his victims, not voluntary action. Furthermore, Dr Fahey strenuously denied the allegations until the last moment before his trial was to commence.
8. Accordingly, the circumstances in respect of which Dr Fahey has already been found guilty involve:
- The most serious offending of its kind, and
 - The circumstances in which the offending occurred, and Dr Fahey’s inappropriate and inadequate response to the offending being disclosed; reflect in the most adverse way on Dr Fahey’s character.
9. On that basis, the Tribunal ordered that Dr Fahey’s name be removed from the medical register, censured him, and made an order relating to costs.
10. It is important to note that the Tribunal stated that it “*Strongly recommends that [Dr Fahey] never be permitted to practise medicine again*”.
11. In a supplementary decision, the Tribunal discussed issues relating to costs. The view was that the substance of the 7 charges was dealt with by the charge based on Dr Fahey’s convictions. The Tribunal said they “*were identical in terms of their subject matter and complaints to seven of the criminal convictions*”.
12. The Tribunal’s tentative view was that the 7 charges had been determined by the charge based on convictions, and there was no need to take any further procedural steps.

Certainly, the Tribunal took the view that the investigation, and other steps in respect of the 7 charges was material to, and part of, what was ultimately dealt with by the charge based on the conviction. The circumstances surrounding the convictions were part of the charge that was dealt with.

13. It is accordingly transparent from the Tribunal's record what has happened to the 7 charges, and that the substance of them has been determined. It is accordingly not necessary to withdraw them, or take any other step; the process relating to them is spent.
14. In respect of the two charges that were not related to the substance of the convictions, they of course are not spent and may proceed to a hearing.
15. The Tribunal however directs that they are withdrawn on the application of the Complaints Assessment Committee. Having examined the circumstances the Tribunal accepts that there is no public interest in proceeding with the charges for these reasons:
 - Dr Fahey has been convicted of disciplinary offences involving the most serious sexual offending,
 - The circumstances of the offending including the premeditated exploitation of vulnerability in patients, and Dr Fahey's failure to respond to the detection of the offending appropriately are a matter of public record. Those circumstances prompted the Tribunal to recommend that Dr Fahey's character is such that he should never practise medicine again,
 - It is frequently, and inevitably, a painful and distressing experience for victims of sexual offending to give evidence before the Tribunal,

It follows that the conviction already in the record of this Tribunal is such, that while the pending charges are very serious ones, they can add only incrementally to proven predatory sexual behaviour extending over some three decades. In terms of imposing a further penalty, Dr Fahey has already been struck off with a recommendation that he never practise medicine again.

While a further financial penalty might be imposed, sentencing principles could well make the amount that could be imposed a grossly inadequate reflection of serious offending. The fact that Dr Fahey is now a prison inmate may constrain the penalty that can be imposed.

16. Accordingly, the Tribunal accepts that the public interest has already been served by the extensive series of conduct already dealt with by criminal charges and this Tribunal; and that the Tribunal is unlikely to be able to do substantially more than acknowledge the fact, if further charges of sexual offending are established before it. It is accordingly to be expected, and appropriate, that victims of offending would not wish to experience the pain and distress of giving evidence in these circumstances.
17. The two outstanding charges are accordingly withdrawn on the basis recorded in this decision.

DATED at Wellington this 19th day of July 2001

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G D Pearson

Deputy Chair

Medical Practitioners Disciplinary Tribunal