



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO: 257/01/88C
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 **WARREN WING NIN
CHAN** medical practitioner
formerly of Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Ms P Kapua (Chair)
Dr F E Bennett, Dr J C Cullen, Dr R S J Gellatly, Mrs H White
(Members)
Ms G J Fraser (Secretary)
Mrs G Rogers (Stenographer)

Hearing held at Auckland on Monday 17, Tuesday 18,
Wednesday 19 and Thursday 20 June 2003

APPEARANCES: Ms K G Davenport for a Complaints Assessment
Committee ("the CAC").
Mr B A Corkill (Legal Assessor)
No appearance by Dr W W N Chan.

Supplementary Decision

THIS supplementary decision should be read in conjunction with Decision Nos. 212/01/88C which issued on 1 November 2002 and 220/01/88C which issued on 18 December 2002.

1. By virtue of the decision dated 1 November 2002 this Tribunal found Dr Chan guilty of seven charges of professional misconduct or conduct unbecoming and not guilty in respect of one charge.
2. That decision was the subject of an appeal by the CAC to the District Court challenging two aspects of the decision, namely:
 - (a) With respect to the "cumulative" charge, that having made findings on the individual charges, the Tribunal would be prejudicing Dr Chan by making a finding on the "cumulative" charge.
 - (b) In respect of the charge where the Respondent was found not guilty (relating to Patient "S"), that Dr Chan, being suspended from practice at the relevant time, could not be charged with disgraceful conduct.

3. On the first matter the District Court Judge concluded:

“The cumulative charge of disgraceful conduct is established as against the first respondent, and that this matter should also be remitted back to the Tribunal for consideration of and in position of, if appropriate, a penalty, again after affording the first respondent an opportunity to be heard.”¹

4. On the second matter the Judge concluded:

“... the Tribunal erred in their conclusion as to the meaning of disgraceful conduct in a professional respect, and, in relation to Mr S, its approach to this charge. I conclude that the first respondent deemed to be registered by the proviso to s47, was in operating on Mr S whilst suspended, acting in the course of carrying out his medical practice.

That being so, and given the evidence which the Tribunal heard not only as to the first respondent’s substantive failings during his treatment of Mr S, which I do not consider it necessary to rehearse here, I conclude that the charge of disgraceful conduct against the first respondent in relation Mr S has been established.

In accordance with the agreed position of counsel, this matter should be referred back to the Tribunal so that the Tribunal can if it elects to do so, consider and impose the appropriate penalty, after affording the respondent an opportunity to be heard.”²

5. Dr Chan was given the opportunity to respond prior to this matter being determined but there has been no response.

¹ paragraph 79 of the District Court Decision

² paragraphs 65-67 of the District Court Decision

6. Ms Davenport in her submissions seeks that Dr Chan's name be removed from the Register, although acknowledging that by Decision 228/02/93C an order has been made earlier this year that Dr Chan's name be removed from the Register of medical practitioners pursuant to Section 110(a) of the Act.
7. Given the District Court Judge's view that two charges of disgraceful conduct have been established against Dr Chan, the Tribunal:
 - (a) Revokes orders (i), (ii), (iii), (iv) and (v), set out on pages 6-7 of its Decision of 18 December 2002; and substitutes:
 - (i) An order on the basis of the two charges of disgraceful conduct which have been established, that Dr Chan's name be removed from the Register of medical practitioners pursuant to s.110(a) of the Act;
 - (ii) An order that Dr Chan be censured in relation to each of the nine charges.
 - (iii) An order that Dr Chan is to pay a fine of \$17,000.00.
 - (iv) An order that Dr Chan is to pay 50% of the costs of the CAC investigation and prosecution and the Tribunal's hearing.

Conclusion:

8. For convenience, the Tribunal summarises all the orders which it has made in this case in respect of Dr Chan. They are that:
 - (a) Dr Chan's name be removed from the Register of medical practitioners pursuant to s.110(a) of the Act.
 - (b) Dr Chan is to be censured in relation to each of the nine charges.
 - (c) Dr Chan is to pay a fine of \$17,000.00
 - (d) Dr Chan is to pay 50% of the costs of the CAC investigation and prosecution and the Tribunal's hearing.

- (e) A report of the Tribunal's substantive decision, and this decision, is to be published in the New Zealand Medical Journal.
 - (f) Publication of the names of the complainants' witnesses, and any other third parties involved in the hearing of the charges laid against Dr Chan is prohibited, except in relation to Ms L Clements and subject to any individual's right to waive suppression of their own identity, but not the identity of any other person whose identity may not be published or otherwise disclosed by this order.
9. The Tribunal also endorses the addendum to the Tribunal's Decision 228/02/93C and expresses its view that the removal of Dr Chan's name should be permanent.

DATED at Auckland this 30th day of November 2003.

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Prue Kapua

Deputy Chair

Medical Practitioners Disciplinary Tribunal