



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

PO Box 5249, Wellington • New Zealand
Ground Floor, NZMA Building • 28 The Terrace, Wellington
Telephone (04) 499 2044 • Fax (04) 499 2045
E-mail mpdt@mpdt.org.nz

DECISION NO: 136/00/62D

IN THE MATTER of the Medical Practitioners Act
1995

-AND-

IN THE MATTER of a charge laid by the Director of
Proceedings pursuant to Section 102
of the Act against **GRAHAM
KEITH PARRY** medical
practitioner of Whangarei

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mrs W N Brandon (Chair)
Mr R W Jones, Dr F McGrath, Dr B J Trenwith, Mrs H White
(Members)
Ms G J Fraser (Secretary)
Mrs G Rogers (Stenographer)

Hearing held at Auckland on Thursday 7 September 2000 and hearing held at Paihia on Monday 9, Tuesday 10 and Wednesday 11 October 2000

APPEARANCES: Mr M F McClelland and Ms T W Davis for the Director of Proceedings
Mr C J Hodson QC and Mr H Waalkens for Dr G K Parry.

**DECISION ON APPLICATION BY RESPONDENT TO DISQUALIFY THE
TRIBUNAL**

Oral decision given on 9 October 2000

- 1. THE CHARGE:**
- 1.1 DR** Parry was charged with one charge of disgraceful conduct in a professional respect.
The charge contained three particulars and Dr Parry was charged that either separately or cumulatively, these particulars amounted to disgraceful conduct.
- 1.2 THE** hearing of the charge commenced by way of a special sitting of the Tribunal held at St Josephs Mercy Hospice in Auckland on 7 September 2000. The hearing was then adjourned and resumed at Paihia on 9 October 2000.
- 1.3 AT** the commencement of the resumed hearing on 9 October 2000, Mr Hodson QC made an application that the Tribunal should disqualify itself from any further conduct of the proceeding. This application was made without any prior notice being given, either to the

Tribunal or to the Director. In essence, Mr Hodson submitted that the Tribunal, in making the orders suspending Dr Parry from practising pending the determination of the charge without notice to him, and on the grounds set out in its Order dated 21 August 2000, acted in defiance of Dr Parry's rights.

1.4 **THE** issue, said Mr Hodson, was not whether or not Dr Parry should have been suspended, but that he was denied the rights of any person affected by legal process. Mr Hodson also submitted, again in essence, that, despite assurances to the contrary, the Tribunal was contaminated by the large amount of television and newspaper publicity about the case.

1.5 **IN** this regard, Mr Hodson asked the Tribunal the source of the figure of "35-40" complaints apparently being made against Dr Parry, referred to in paragraph 11 of its Order suspending Dr Parry's registration, dated 9 September 2000.

1.6 **MR** Hodson also asked if any members of the Tribunal had "*any personal knowledge of Dr Parry which might influence his/her decision in this case and I further ask whether any member of the Tribunal has discussed any aspects of this case or of Dr Parry's practice with any witness who has supplied any report or affidavit in the case.*"

1.7 **THE** background to, and full reasons for, the Tribunal's Order suspending Dr Parry, and its later Decision on his application for revocation of that suspension, is set out in its Order and in its Decisions dated 21 August 2000 and 3 October 2000.

- 1.8** **MR** McClelland opposed Mr Hodson's application. He advised the Tribunal that the Director had no concerns about the Tribunal or any of its members. He submitted that Mr Hodson was seeking to re-litigate the order suspending Dr Parry, and that the appropriate course in that regard was to commence judicial review proceedings. He rejected Mr Hodson's submission that the Tribunal had acted unlawfully, and that it had given reasons for the suppression order, and had acted in accordance with the 1995 Act. The suggestion that in following the Act the Tribunal had showed bias simply could not stand.
- 1.9** **THE** Tribunal retired to consider all of the submissions made to it. It determined that it should not disqualify itself. It considered that it had made every effort to avoid as much of the publicity about the case as it could reasonably do so, and that to the best of its knowledge none of the members had spoken to any witnesses about the case, nor was Dr Parry personally known to any of the Tribunal members. None of the members of the Tribunal had engaged in any discussions with any person which could be considered prejudicial or unfair to Dr Parry.
- 1.10** To the best of its recollection, the figure of "possibly as many as 35-40" other complaints against Dr Parry came from news media reports, but the Tribunal is unable to recall the exact source. The Tribunal was aware that there were a number of other complaints made against Dr Parry, but, while in fairness to Dr Parry the Tribunal wished to advise him that it was aware of the reports of other complaints, the existence and number of such complaints was not a matter of great significance for the Tribunal in the context of its decision to order Dr Parry's suspension from the medical register, being a matter which the Tribunal considered relevant, not determinative.

- 1.11** **THE** publicity about other complaints which might be made against Dr Parry was not the primary reason for the Tribunal's decision to suspend him; simply that the Tribunal had come to the view, having heard Mrs Poutsma's evidence, and the admissions as to the correctness of the factual situation giving rise to the Charge, that there was an urgent need to act and that the Act required that if matters came to light which raised questions as to any risk to the health and safety of members of the public, then the Tribunal should act promptly.
- 1.12** **IN** making its order to suspend Dr Parry, the Tribunal was aware that Dr Parry had the right to apply for revocation of the suspension order, and it had dealt with the application which was duly made entirely on a de novo basis and on the basis of the evidence which was placed before it, and on the evidence that was placed before it in the context of the hearing of the present charge only. (See para 6.12 of the Tribunal's decision of 3 October 2000).
- 1.13** **FURTHER**, and in relation to the submission that the Tribunal was contaminated by the publicity about the Charge, the Tribunal pointed out to Mr Hodson that any other members of the Tribunal's panel of members would likely be more aware of the publicity which had appeared in the news media than those appointed to hear the charge. The appointed members have deliberately avoided as much of the publicity as practically possible, for example they have not seen the television items screened in the TV3 20/20 programmes, or read any newspaper articles which were more than mere reporting of this case in general radio or television news broadcasts or newspaper reports.

1.14 OTHER members of the Tribunal's panel, not appointed to hear the charge, are likely not to have been similarly constrained in their exposure to publicity and public comment about this case and other possible complaints or charges.

1.15 THE Tribunal then indicated its desire that the hearing proceed.

1.16 MR Hodson then asked to see the Tribunal in Chambers, and a further objection, this time to the composition of the Tribunal, was raised by him.

1.17 IN the event, although it would have meant the abandonment of the present hearing and the commencement of a fresh hearing before a differently composed Tribunal the next morning, the Tribunal offered to substitute the member in respect of whom an objection was raised.

1.18 AFTER conferring with Dr Parry and taking instructions, Mr Hodson and Mr Waalkens advised that the objection was withdrawn for all purposes (including any appeal), and the jurisdiction of the Tribunal as constituted was accepted.

1.19 MR McClelland sought confirmation that the objection raised would not be the grounds of any subsequent appeal, and this confirmation was given

DATED at Auckland this 26th day of October 2000

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W N Brandon

Chair

Medical Practitioners Disciplinary Tribunal