



**MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL**

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**DECISION NO:** 144/00/64C  
**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) of the Act against  
**MORGAN FRANCIS FAHEY**  
medical practitioner of Christchurch

**BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL**

**TRIBUNAL:** Mrs W N Brandon (Chair)  
Dr F E Bennett, Ms S Cole, Dr J W Gleisner, Dr A M C McCoy,  
(Members)  
Ms G J Fraser (Secretary)  
Mrs G Rogers (Stenographer)

Hearing held at Christchurch on Thursday 12 October 2000.

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

Mr C J Hodson QC for Dr M F Fahey.

**1. THE CHARGE:**

**THE** Complaints Assessment Committee pursuant to section 93(1)(b) of the Medical Practitioners Act 1995 ("the Act") charges that Dr Morgan Francis Fahey, Registered Medical Practitioner of Christchurch on or about the 1<sup>st</sup> day of June 2000 was convicted by the High Court in Christchurch of the following offences as set out in the attached certificate of conviction signed by Deputy Registrar R A Fahey of the High Court at Christchurch, each being an offence punishable by imprisonment for a term of three months or longer:

1. Rape, section 128 Crimes Act 1961 (x1).
2. Sexual violation, section 128(1) Crimes Act 1961 (x1).
3. Indecent assault, section 135A Crimes Act 1961 (x11)

and the circumstances of the offences reflect adversely on the practitioner's fitness to practise medicine.

**2. FACTUAL BACKGROUND:**

**2.1 DR** Fahey was originally charged with a number of offences arising as a result of allegations of sexual misconduct made by several complainants. However, by Decision dated 14 December 1999, this Tribunal ordered that the hearing of those charges was to be stayed pending the outcome of criminal charges laid against Dr Fahey, which charges related to essentially the same subject-matter as the charges laid with the Tribunal, and involved a charge of sexual violation and other sexual offending.

**2.2 THE** CAC originally determined that Dr Fahey should be charged with disgraceful conduct in a professional respect. In respect of one complaint, two charges of disgraceful conduct were brought, one alleging sexual misconduct and the other inappropriate prescribing of the drug duromine. In all, nine charges of disgraceful conduct were brought against Dr Fahey.

**2.3 AT** that time, Dr Fahey strenuously denied all of the charges and the allegations made against him. However, when the criminal charges were called for hearing, Dr Fahey pleaded guilty to all of the charges, and on 1 June 2000, Dr Fahey was sentenced in the High Court at Christchurch to two terms of imprisonment of four years and two years respectively, to be served concurrently, i.e. a total of six years imprisonment.

**2.4 ACCORDINGLY**, the charges laid in the Tribunal were amended, and came before the Tribunal as a referral of conviction, in the form set out above. Ultimately, with the exception of two of the charges, the other charges with the Tribunal were the subject of

seven of 13 criminal convictions entered against Dr Fahey. No decision has been made as to whether or not the remaining two charges will proceed.

### **3. EVIDENCE FOR THE CAC:**

**3.1** AT the hearing of the Charge, the Tribunal had before it the following:

**3.1.1** The criminal charges

**3.1.2** Summary of Facts

**3.1.3** The Judge's Sentencing Notes

**3.1.4** Victim Impact Reports

**3.2** MR McClelland made submissions on behalf of the Complaints Assessment Committee.

**3.3** THE evidential material provided disclosed that all of the charges which Dr Fahey admitted related to offending which had occurred in the context of his professional practice, and all therefore involved gross breaches of trust. The offending had been persistent, and occurred over a period of 31 years. Mr McClelland submitted that Dr Fahey had become a sexual predator preying on female patients. As the sentencing judge, Hansen J, noted, a number of Dr Fahey's victims were vulnerable and he appeared to have preyed on that vulnerability.

**3.4** IN relation to one patient, Dr Fahey was charged with rape and indecent assault, which assaults occurred when she consulted him regarding her pregnancy. There were a number of charges relating to indecent assaults involving women who were required to undergo

physical examinations as a part of their applications for employment with Ansett. These offences involved inappropriate fondling and comments of a sexual nature.

**3.5 EARLIER** offences involved the use of a vibrator, digital vaginal stimulation, attempting to place female patients' hands on his penis, ejaculating on a complainant and holding and kissing another.

**3.6 ALL** of the offences related to female patients who went to see Dr Fahey in his capacity as a general practitioner. In many instances he sought to cover up his offending by asserting that it was legitimate medical treatment. There was a degree of premeditation present in all cases. Dr Fahey was at times threatening, aggressive, and persistent. At no time did he offer any of the complainants a chaperone. On at least one occasion Dr Fahey told the patient that it was no use telling anyone what had happened as she would never be believed.

**3.7 IN** sentencing Dr Fahey, Justice Hansen stated:

*"[8] The victim impact reports make compelling and harrowing reading. Almost without exception your victims have ongoing problems and difficulties arising from your offending. Some have relationship problems, and understandably struggle to trust men, particularly those in positions of responsibility. Your victims speak of feeling dirty, of depression and being upset. One has to force herself to undergo routine medical examinations. I think I can best express the effect of your offending on your victims by quoting directly from one of the victim impact reports. Essentially that encapsulates most of the bewilderment, hurt and pain suffered by all of these brave women who exposed your wrongdoing. This victim, in dealing with the impact on her life, said this, ..."*

**3.8 JUSTICE** Hansen stated that it was not his practice to quote from Victim Impact Reports, but he did so on this occasion for a number of reasons. The first was that he considered

that Dr Fahey had no real insight into the impact of his offending on the women involved.

The second was that there were suggestions in the testimonials placed before the court that what Dr Fahey had done equated to a misdemeanour or an indiscretion. This suggestion again revealed a lack of insight. The third reason was that Hansen J thought it was important that the public understand the impact of the offending on victims.

**3.9 MR McClelland** also made submissions regarding the impact of Dr Fahey's offending on the medical profession generally, and especially in relation to general practitioners.

McClelland submitted that:

*“public confidence in the profession has been rocked by the nature and degree of Dr Fahey's abuse of his position of trust. The profession has a real concern that patients have or may become fearful of a doctor's power and avoid medical care for this reason. There is also a concern that there is a public belief that somehow the profession condoned Dr Fahey's offending, occurring as it did over such a long period. The impact of Dr Fahey's offending on the integrity of the profession has been dramatic and will be long lasting. The Medical Council is already holding workshops aimed at restoring public confidence in the profession but this will be a slow process.”*

**3.10 MR McClelland** submitted, the primary purpose of the disciplinary process is to protect the public, although there is also a punitive element, and also to maintain the integrity of the profession.

**3.11 GIVEN** the serious breaches of trust involving a number of complainants, carried on over a long period of time, the absolute abuse of his position of trust, the impact on the complainants, and on the public and the medical profession, it was the CAC's submission that Dr Fahey's name should be removed from the medical register. There could be no doubt that Dr Fahey's offending reflected adversely on his fitness to practise.

#### **4. SUBMISSIONS & EVIDENCE ON BEHALF OF DR FAHEY**

**4.1 FOR** Dr Fahey, Mr Hodson referred to the submissions made by Dr Fahey's counsel, Mr C McVeagh QC at the sentencing hearing, to the testimonials also presented to the court at that time, and to the psychiatric report prepared in May 2000 to inform the court what Dr Fahey's psychiatric state then was. All of this material was made available to the Tribunal.

**4.2 MR** Hodson told the Tribunal that Dr Fahey had asked that he say that Dr Fahey is "*desperately sorry*" for letting down his profession. Mr Hodson referred to Dr Fahey's work for the community, particularly in relation to road accidents, which has been officially recognised in New Zealand and internationally. He was awarded the OBE, and that honour has been returned. Dr Fahey's curriculum vitae was provided to the Tribunal in the documentary material already referred to.

**4.3 MR** Hodson also suggested that there were two matters which he wished to raise which might be relevant, because Dr Fahey had asked him "*to see if anything constructive can arise out of this*". The first of these related to the issue as to whether or not patient consultations should be chaperoned. While Mr Hodson did not submit that all consultations should be chaperoned, the Code of Patient's Rights did require that any patient who required a chaperone was entitled to have any person present at any consultation for that purpose.

**4.4 THE** second matter related to the public belief, if any such belief exists, that other members of the profession may have known about Dr Fahey's offending and said nothing;

that is a matter which may never be resolved. What his submission amounted to, said Mr Hodson, was

*“an acknowledgement that where complaints are made they must be taken seriously ... It is not appropriate to endeavour to sweep matters under the carpet. It would have been infinitely better had something been said about Dr Fahey’s behaviour, both for him as well as for the women, and if something had been done years ago. That didn’t occur. I don’t suggest that in this case anybody swept anything under the carpet because there is no way of knowing that in fact happened, but what we can draw from this is an awareness that sometimes at the very least where there is smoke there is fire and that there is a need to be alert and to listen to people and to sort out as alertly and as carefully as one can gossip and serious concern.*

*Dr Fahey wishes, of course, that his offending had come to light earlier. That wish is, of course, from where he is now. Whether or not it is appropriate for him to have those feelings is one thing; what is certain is that, as I have said, had it come to light earlier it would have been better for everyone.”*

**4.5** AS to penalty, Mr Hodson submitted that Dr Fahey was under no doubt that his name is to be erased from the medical register, and he also acknowledged that his conduct warrants censure. However, on the matter of costs, Mr Hodson submitted that no costs should be awarded against Dr Fahey as if such an order was made, and costs were recovered, *“it is obvious that this will affect his family and not, for many years at least, Dr Fahey. So I ask you to bear that in mind.”*

## **5. THE DECISION:**

**5.1** THE Tribunal adjourned the hearing to consider its decision, and was able to deliver an oral decision in the afternoon of the hearing day. The Tribunal determined that it will come as no surprise to Dr Fahey that it finds that the litany of offending that was placed before it is disgraceful.



- 5.2** **THE** fact that he perpetrated this offending on patients, and entirely in the context of his professional practice, is reprehensible and dishonourable in the extreme.
- 5.3** **DR** Fahey's abuse of his patients who place their trust in him was, and is, abhorrent to all medical practitioners. His behaviour has disgraced himself and has brought the medical profession into disrepute. As Mr McClelland submitted, the impact of Dr Fahey's offending on the integrity of the profession is dramatic and will be long-lasting.
- 5.4** **IT** is clear from the victim impact reports provided to the Tribunal that, in the case of his victims, what he did has caused irreparable harm and will be a distressing and painful memory which they will carry with them for the rest of their lives.
- 5.5** **THE** Tribunal carefully considered all of the submissions made to it. In particular, the Tribunal is concerned that Dr Fahey seems still to be 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 (by way of requiring chaperones, or making complaints, or bringing offending to the attention of the relevant authorities).
- 5.6** **THE** Tribunal has borne in mind that Dr Fahey's offending was brought to an end by disclosure on the part of his victims, rather than by any voluntary action or disclosure on his part. It is also relevant that Dr Fahey strenuously denied the allegations made against him almost until the last moment before the trial was to commence, and he denied the allegations and charges laid against him in this Tribunal, and made application to the High

Court seeking name suppression to prevent the fact that such charges had been laid from being disclosed to the public.

**5.7 THE** medical profession can only express its strongest condemnation of Dr Fahey's conduct in a practical and public way through its disciplinary procedures and the penalties which this Tribunal can impose. Had the charges originally laid before the Tribunal proceeded, and Dr Fahey found guilty, he would have been liable to be found guilty of disgraceful conduct. Now that he has been convicted in relation to the criminal charges, the Act provides only that the grounds on which he can be disciplined are that "*the circumstances of that offence reflect adversely on his fitness to practise medicine*", s.109(1)(e). The Tribunal considers that it is unarguable that the offences on which Dr Fahey was convicted certainly fulfil that criteria, and the Charge is established.

**5.8 NOTWITHSTANDING** the language of s.109(1)(e), the Tribunal records that it does find that Dr Fahey's conduct, and the nature and extent of his offending, is disgraceful, but that this case should not, by any yardstick, be regarded as the 'benchmark' for, or as defining "*disgraceful conduct in a professional respect*" in the professional disciplinary context. The Tribunal regards the nature of offending such as is present in this case as extraordinary.

**5.9 HAVING** found that the charge is established, the full range of penalties are available to the Tribunal, including striking his name off the medical register, with the exception that the Tribunal may not impose a fine (s.110(3)).

**6. ORDERS****6.1 ACCORDINGLY**, the Tribunal orders as follows:

**6.1.1** Dr Fahey's name is to be removed from the medical register, and the Tribunal strongly recommends that he never be permitted to practise medicine again;

**6.1.2** Dr Fahey be censured.

**6.1.3** Dr Fahey is to pay 75% of the costs and expenses of and incidental to the investigation, inquiry and prosecution of the Charges by the CAC, and the hearing of the Tribunal.

**6.2** **IN** imposing costs the Tribunal has taken into account the fact that this Tribunal, and the professional disciplinary process generally, is funded by the profession. The costs of the CAC's investigation of the complaints laid against Dr Fahey, and the prosecution of the charges laid against him, and the hearing of this Tribunal, are all costs borne by Dr Fahey's professional peers, who must also now deal with the aftermath of his offending.

**6.3** **DR** Fahey also strenuously denied and defended all of the allegations and charges made against him, and caused both the CAC and the Tribunal to incur costs in the High Court, and in the Tribunal, dealing with the applications for name suppression, suspension, and a stay of the hearing of the professional disciplinary charges.

**6.4** **THE** recovery of costs is a matter for the Medical Council, but the Tribunal considers that it would be manifestly unfair, and an undesirable precedent, if it were not to impose costs

against Dr Fahey, and at a level which is entirely fair and reasonable in the circumstances.

With regard to the level of costs ordered, there was strong support among the members of the Tribunal for an order of costs at the highest possible end of the scale, i.e. 90% or even higher, and the decision to order 75% of the costs only reflects a reduction which the Tribunal members have agreed makes some allowance for Mr Hodson's submission.

**DATED** at Auckland this 29<sup>th</sup> day of November 2000

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W N Brandon

Chair

Medical Practitioners Disciplinary Tribunal