



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: 195/01/71D

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 **LYNNE JOHN**
medical practitioner of Rangiora

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mrs W N Brandon (Chair)
Ms S Cole, Dr R S J Gellatly, Professor W Gillett,
Dr J W Gleisner (Members)
Ms K L Davies (Hearing Officer)
Mrs G Rogers (Stenographer)

Hearing held at Christchurch on Wednesday 24 and Thursday 25 October
2001

APPEARANCES: Ms M McDowell and Ms T Baker for the Director of Proceedings
Mr C W James for Dr L John.

Supplementary Decision

1. In its decision 183/01/71D dated 10 December 2001 (“the Substantive Decision”) the Tribunal found Dr John guilty of conduct unbecoming a medical practitioner, and that conduct reflects adversely on her fitness to practice medicine. This supplementary decision should be read in conjunction with the Substantive Decision.
2. The Substantive Decision followed a hearing of a charge of conduct unbecoming that reflects adversely on Dr John’s fitness to practice laid against her by the Director of Proceedings. The allegations giving rise to that charge that were upheld by the Tribunal were that Dr John failed to discuss inducing her patient’s labour with a specialist obstetrician prior to such induction (Particular 1.2 of the charge) and that Dr John failed to transfer her patient to Christchurch Womens Hospital when it became apparent that her labour was not progressing (Particular 1.3 of the charge).

Submissions on penalty

Submissions on behalf of the Director

3. The Director submits that Dr John’s conduct giving rise to the charge is conduct that falls at the more serious end of the spectrum of offences amounting to conduct unbecoming a medical practitioner and that, of the two particulars of the charge that were upheld, Particular 1.3 is the more serious.

4. In her submissions, the Director refers expressly to the Tribunal's finding that Dr John's decision to attempt an instrumental delivery was a significant error of judgement.
5. The Director has also provided a letter from the patient involved, which she asked the Tribunal to consider as a victim impact statement.
6. The Director seeks censure, a fine that should reflect the seriousness of Dr John's misconduct, and costs.
7. In her submissions, the Director acknowledges that the incident giving rise to the charge has had a significant impact on Dr John and that she no longer practices obstetrics, primarily because of this case. Dr John is genuinely remorseful and has made some attempt to redress her patient's loss by means of a financial settlement, the terms of which are unknown to the Director.

Submissions on behalf of Dr John

8. For Dr John, Mr James records that Dr John had initially given a general indication that this matter could proceed on the basis of a guilty plea. However her instructions in this regard were withdrawn very late in the day primarily because Dr John could not accept wrong doing in respect of the 'gestational diabetes issue'. The allegations in this regard ultimately were not upheld.
9. Mr James submitted that Dr John is entitled to some credit and consideration for acknowledging that she should have transferred her patient to Christchurch Womens Hospital, and he referred to her demeanour at the hearing and the fact that she readily made concessions in this regard.
10. Mr James referred also to the coroner's hearing into the death of the complainants' baby, and to numerous articles and references to her conduct in all media in the period since the events giving rise to the charge occurred. Dr John has apparently also been the subject of a television programme and articles in popular magazines. Mr James submitted that Dr John has already paid a significant price for errors of judgement which occurred nearly 5 years ago. Dr John

has terminated her obstetric practice shortly after the events giving rise to this charge and she has also been involved in civil litigation proceedings which culminated in settlement in a substantial sum to Mr and Mrs Dobby.

11. Mr James also attached a number of references attesting to Dr John's good character and the high regard in which she is held by her professional peers.

Decision

12. The Tribunal has considered all of the submissions made by the Director and by Mr James, and all of the material submitted to it with those submissions. Having taken into account all of this material, the submissions and also having reviewed its findings made in the Substantive Decision, the Tribunal determines that the following penalty is appropriate:

- (i) Dr John is censured.
- (ii) She is to pay a fine in the sum of \$2,000.00.
- (iii) Dr John is to pay \$10,789.33 being 20% of the costs and expenses of and incidental to the inquiry by the Director of Proceedings in relation to the subject matter of this charge and the prosecution of the charge and the Tribunal's hearing of the charge.
- (iv) In view of Dr John's decision to give up her obstetric practice, the Tribunal does not consider that there is any purpose in ordering that any conditions be placed on her practice.
- (v) A notice under section 138(2) of the Act be published in the New Zealand Medical Journal.

Reasons of censure

13. The Tribunal is satisfied, taking into account all of the relevant facts and circumstances and findings contained in the Substantive Decision, that it is appropriate that Dr John should be censured.

Fine

- 14. The Tribunal considers that \$2,000.00 is appropriate in all the circumstances of this case and is consistent with the amount of such fines ordered in similar cases.

Costs

- 15. In relation to costs, the Tribunal is satisfied that 20% of the costs incurred by the Director and the Tribunal are fair and appropriate taking into account all of the relevant facts and circumstances, the length of the hearing and the proportion of costs ordered in similar cases.
- 16. The Tribunal is also satisfied that 20% is an appropriate award of costs taking into account that the most serious of the particulars of the charge were upheld but that, as a general rule, a downwards adjustment of the general order of costs award (50%) is appropriate in relation to a charge of conduct unbecoming that reflects adversely on the practitioner's fitness to practice medicine.
- 17. The Tribunal has also endeavoured to fairly take into account the general principle that costs awards are not to be used as a means to punish a practitioner, but that the seriousness of the Tribunal's findings ought to be appropriately reflected in the overall penalty.

DATED at Wellington this 3rd day of April 2002

.....

W N Brandon

Chair

Medical Practitioners Disciplinary Tribunal