MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO: 169/01/75D

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 **JONATHAN GRAHAM WRIGHT** medical practitioner of Christchurch

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mr T F Fookes (Chair)

Mr P Budden, Dr G S Douglas, Dr F McGrath,

Associate Professor Dame N Restieaux (Members)

Ms K Davies (Hearing Officer)

Mrs G Rogers (Stenographer)

Hearing held at Christchurch on Thursday 16 August 2001

APPEARANCES: Ms T Baker for the Director of Proceedings

Mr A J Knowsley for Dr J G Wright.

The Charge

1. Pursuant to sections 102 and 109 of the Medical Practitioners Act 1995 ("the Act") the Director of Proceedings ("the Director") charged that between on or about 20 March 1998 and 8 October 1998 whilst treating a named patient Dr Wright "acted in such a way that amounted to conduct unbecoming a medical practitioner, and that conduct reflects adversely on the practitioner's fitness to practise medicine".

2. By way of particulars the charge alleged that Dr Wright:

"1.1 Failed to appropriately assess your patient (name of patient) before prescribing tenuate dospan.

AND/OR

1.2 Prescribed to the said patient a dose of tenuate dospan that is not recommended.

AND/OR

1.3 Failed to obtain [the] patient's informed consent for the treatment in that [he] did not provide full information to [the] patient including the nature of tenuate dospan and the potential side effects.

AND/OR

1.4 Failed to obtain advice from a cardiological specialist before prescribing tenuate dospan when there was an evidenced history of [the] patient having had tachycardia."

3. The charge alleged that the "conduct alleged in paragraphs 1.1 to 1.4 amount to conduct unbecoming and paragraphs 1.1 to 1.4 inclusive either separately or cumulatively are particulars of that conduct unbecoming a medical practitioner, and that conduct reflects adversely on this practitioner's fitness to practise medicine."

4. The charge was, and all of its particulars were, admitted.

5. Section 109 of the Act provides that the Tribunal may make any one or more of the orders authorised by s 110 if **the Tribunal**, after conducting a hearing, is satisfied that the practitioner has committed one of the acts set out in paragraphs (a) to (g) of s 109(1). Accordingly the Tribunal has, notwithstanding the admission, considered whether it is satisfied that Dr Wright has been guilty of conduct unbecoming a medical practitioner and that that conduct reflects adversely on the practitioner's fitness to practise medicine.

The Facts

6. An agreed summary of facts, signed by both counsel, was provided to the Tribunal.

7. It is not necessary to set out in this decision the whole of the contents of the summary. On 20 March 1998 the complainant took one of her children to Dr Wright. In the course of the consultation the conversation turned to the complainant's weight. The complainant told Dr Wright that she had tried a number of means of losing weight.

8. Although it was documented in the patient's notes, which Dr Wright had, that the patient had in 1989 experienced tachycardia, in 1995 suffered from anxiety and in 1997 suffered from palpitations, Dr Wright did not take her blood pressure or pulse or check her heart. He suggested diet pills, weighed her and wrote out a prescription for 30 75mg tablets of tenuate dospan. It is an appetite suppressant which is described as an amphetamine-type drug. The 1996 New Ethicals Catalogue recommends a dosage of one 75mg tablet daily. The precautions refer to hypertension and cardiovascular disease, drug abuse and epilepsy and the adverse effects are listed as palpitations, restlessness, rash, dry mouth, GI effects, lowered seizure threshold and, occasionally, impotence, bone marrow depression, endocrine effects and toxic psychosis (high doses).

9. According to the agreed summary of facts, the New Ethicals Compendium also states:

"Current medical opinion supports short-term, intermittent use of an appetite suppressant. Courses of Tenuate Dospan may be given over periods up to twelve weeks, with intervening periods of one month without treatment….

…The recommended dose should not be exceeded in an attempt to increase the effect; rather the drug should be discontinued when the patient stops losing weight."

10. Dr Wright did not discuss with the patient the nature of tenuate dospan nor any of the possible side effects such as elevation of blood pressure, a faster heart rate, palpitations, dizziness, anxiety and headaches.

11. On 3 April 1998 the complainant consulted Dr Wright on another matter and was weighed. She had lost weight. He prescribed a further 30 75mg tenuate dospan tablets and told the complainant to increase the dosage to two per day.

12. 30 further tablets were prescribed on each of 17 April, 14 and 29 May and 2 June 1998. On 16 June 1998, when it was established that the complainant had not sustained any weight loss, Dr Wright prescribed 30 30mg tablets of duromine.

13. On 15 July 1998 Dr Wright prescribed a further 30 tenuate dospan tablets. On 31 July 1998 he prescribed 60 of those tablets and on or about 31 August 1998 he gave the complainant a further prescription for tenuate dospan. On both 24 September and 8 October 1998 he prescribed 30 further tablets. On the latter date he told the complainant that this would be her last script and told her to take one tablet per day. (From 17 April 1998 until 24 September 1998 he had been telling her to take two tablets per day.)

14. In a letter to the Health and Disability Commissioner ("the Commissioner") Dr Wright acknowledged that prescriptions for 270 tenuate dospan tablets had been given over a period of seven months. He said that the complainant had also shown him copies of two further prescriptions not recorded in the notes and involving a total of 60 such tablets. Accordingly it seems that during the period from 20 March to 8 October 1998

(approximately two weeks shorter than seven months) some 330 tenuate dospan tablets were prescribed.

15. At no point during the period from 20 March to 8 October 1998 did Dr Wright check the complainant's blood pressure or pulse or advise her of any possible side effects of tenuate dospan. He weighed her at each consultation.

16. In November 1998 the complainant consulted another doctor. By that time she was suffering from tremors, nervousness and jitteriness. She was advised to, and did, stop taking the drug. Most of the side effects have since subsided. The complainant still suffers from a racing heartbeat but the agreed summary recorded that the Director does not allege that the continued tachycardia is a direct result of the continued use of tenuate dospan.

17. In November 1998 the complainant wrote to Dr Wright complaining that she had been on tenuate dospan for a period longer than is considered safe and that he had prescribed her twice the recommended daily level. In response Dr Wright acknowledged that the amount should have been monitored more closely, that one tablet a day is the correct dose and that (except for measuring the complainant's weight) he had made no other recordings regarding the tenuate dospan. He thanked the complainant for bringing this to his attention, apologised for any distress caused and said that he would certainly try to amend his practice to improve on the important points she had raised.

18. In a letter to the Commissioner in May 1999 Dr Wright acknowledged that he had since the complaint become aware of the recommendations to have a break (from taking tenuate dospan) every twelve weeks and not to exceed the recommended dose of 75mg daily. He acknowledged that the dose prescribed for the complainant was not that of the recommendations and said that he had apologised to the complainant for this.

The Hearing

19. Counsel made written submissions. These were, in both cases, concise, clear and helpful. In addition a written statement was received from the complainant, attesting to the distress

which she feels and her uncertainty at having "to live forever not knowing what is in front of me". The Tribunal also heard from Dr Wright and he answered questions from members.

The Law

20. In *B v The Medical Council of New Zealand* (High Court, Auckland Registry, HC 11/96, 8 July 1996) at page 15 Elias J (as she then was) said:

> *"There is little authority on what constitutes "conduct unbecoming". The classification requires assessment of degree. But it needs to be recognised that conduct which attracts professional discipline, even at the lower end of the scale, must be conduct which departs from acceptable professional standards. That departure must be significant enough to attract sanction for the purposes of protecting the public. Such protection is the basis upon which registration under the Act, with its privileges, is available. I accept the submission of Mr Waalkens that a finding of conduct unbecoming is not required in every case where error is shown. To require the wisdom available with hindsight would impose a standard which it is unfair to impose. The question is not whether error was made but whether the practitioner's conduct was an acceptable discharge of his or her professional obligations. The threshold is inevitably one of degree. Negligence may or may not (according to degree) be sufficient to constitute professional conduct (sic) or conduct unbecoming:……The structure of the disciplinary processes set up by the Act, which rely in large part upon judgment by a practitioner's peers, emphasises that the best guide as to what is acceptable professional conduct is the standards applied by competent, ethical and responsible practitioners. But the inclusion of lay representatives in the disciplinary process and the right of appeal to this court indicates that usual professional practice, while significant, may not always be determinative; the reasonableness of the standards applied must ultimately be for the court to determine, taking into account all the circumstances including not only practice but also patient interests and community expectations, including the expectation that professional standards are not to be permitted to lag. The disciplinary process in part is one of setting standards."*

Burden and Standard of Proof

21. The burden of proof is on the Director. The standard of proof is the civil standard, i.e. the balance of probabilities, and the degree of satisfaction which is called for will vary according to the gravity of the allegation made.

The Particulars

22. As to Particular 1.1 the Tribunal is satisfied to the required standard that it has been proved that Dr Wright's admitted failure to assess the patient appropriately before prescribing tenuate dospan, with its recognised risk of significant side effects, was an unacceptable discharge of his professional obligations, of sufficient significance to attract sanction for the purpose of protecting the public, and that it constitutes conduct unbecoming a medical practitioner. There were factors in the complainant's medical history, which Dr Wright knew or should have known of, which meant that before he considered prescribing the particular drug for her he should have carried out an appropriate assessment. There was a plain need for him to know the cardiac status of the patient before prescribing. At the very least he should have taken her blood pressure but did not do so.

The Tribunal regards this omission as falling in approximately the middle of the range of seriousness of conduct unbecoming.

As to Particular 1.2 the Tribunal has no hesitation in finding the conduct alleged in this Particular, and admitted by Dr Wright, proved. Not only did he prescribe for much of the period in question a dose which was double that recommended; he also increased the dose which he prescribed from one per day to two per day in direct contradiction of the statement in the New Ethicals Compendium that the recommended dose should not be exceeded; he maintained the tenuate dospan regime for much longer than the recommended maximum period of 12 weeks and, except for the occasion on which he prescribed duromine, another anorexiant, he did not ensure that there were intervening periods of one month without treatment.

The prescription of a dose that was not only not recommended but was double the recommended dose was , in the view of the Tribunal, in the particular circumstances of this case a completely unacceptable discharge of Dr Wright's professional obligations and a clear case of conduct unbecoming. The Tribunal considers that the conduct involved in this Particular, which far from being a "one off" instance of over-prescribing extended from 3 April (the date when he first told the complainant to take two tablets per day) to 8

October 1998 (when he told her to take one a day), a period of just over six months, is a relatively serious instance of conduct unbecoming.

In relation to Particular 1.3 the Tribunal is satisfied that the admitted failure to obtain the patient's informed consent to the treatment amounts to conduct unbecoming. Once again the conduct in question amounts to an unacceptable discharge of the practitioner's professional obligations. Apart altogether from the general obligation on practitioners to obtain informed consent, there were in this case factors in the patient's medical history, including her previous anxiety, tachycardia and palpitations, which made it important that before she was prescribed tenuate dospan she should be informed, in a frank and understandable manner, what the nature of the drug was, what its potential side effects were and what the consequences for her might be if one or more of those side effects materialised. She also should have been informed of alternative methods of dealing with her weight. Only then could she make an informed decision as to whether or not to undergo the recommended treatment.

The Tribunal considers that the conduct referred in Particular 1.3 is at the higher end of the range of seriousness in cases of conduct unbecoming.

As to Particular 1.4 the Tribunal is again satisfied that it has been proved that the conduct alleged in that Particular, and admitted, was an unacceptable discharge of the practitioner's professional obligations to his patient and that in the respect in question his departure from acceptable professional standards was significant enough to attract sanction for the purposes of protecting the public. Given the history of tachycardia, and in view of his failure to carry out an appropriate assessment of the patient, it was incumbent on Dr Wright to obtain cardiological advice before prescribing the drug in question.

The Tribunal is not saying that every medical practitioner who contemplates prescribing tenuate dospan should first obtain cardiological advice. That is not its view. It does however consider that Dr Wright should have obtained such advice because the patient had a history of tachycardia and he had not appropriately assessed the patient.

The Tribunal considers, however, that the conduct alleged in this Particular, while constituting conduct unbecoming, is the least serious of the four proven departures by Dr Wright from acceptable standards. It is considered to be towards the lower end of the range of seriousness of cases of conduct unbecoming.

23. In *Duncan v Medical Practitioners Disciplinary Committee* [1986] 1 NZLR 513 the Court of Appeal held that:

"When there is a comprehensive charge as well, the Council should go on to consider it after determining the separate charges. Having made the findings on the separate charges, they should arrive at a conclusion as to the overall gravity of the conduct of which they have found the practitioner guilty."

In this case the Tribunal has found in the case of all four Particulars that it has been proved to the required standard that the conduct alleged therein amounts to conduct unbecoming a medical practitioner. In the case of two of the four Particulars it regards the conduct to be at the higher end of the range of seriousness in cases of conduct unbecoming. In the case of one of the Particulars the conduct is regarded as being in about the middle of that range and in the case of the fourth Particular the conduct is considered to be towards the lower end of the range. In the circumstances the Tribunal finds that the charge of conduct unbecoming has been proved. Its conclusion as to the overall gravity of the conduct of which it has found the practitioner guilty is that such conduct is somewhat higher than the middle of the range of seriousness in cases of conduct unbecoming.

Adverse Reflection

24. As the submissions of counsel for the Director rightly acknowledged, it is not sufficient to show that a practitioner has been guilty of conduct unbecoming. It must also be proved that the conduct reflects adversely on the practitioner's fitness to practise medicine.

25. In *Complaints Assessment Committee v Mantell* (District Court, Auckland, NP 4533/98, 7 May 1999) the Court held that:

"The section requires assessment of standards of conduct using a yardstick of fitness. It does not call for an assessment of individual practitioners' fitness to practise."

The learned judge who heard that case also said of the "rider" to s 109(1)(c):

"The text of the rider in my view makes it clear that all that the prosecution need to establish in a charge of conduct unbecoming is that the conduct reflects adversely on the practitioner's fitness to practise medicine…The focus of the enquiry is whether the conduct is of such a kind that it puts in issue whether or not the practitioner whose conduct it is, is a fit person to practise medicine…The conduct will need to be of a kind that is inconsistent with what might be expected from a practitioner who acts in compliance with the standards normally observed by those who are fit to practise medicine. But not every divergence from recognised standards will reflect adversely on a practitioner's fitness to practise. It is a matter of degree."

26. There is no basis on upon which the Tribunal could justifiably say that Dr Wright is unfit to practise. It says no such thing. It has no doubt, however, that Dr Wright's proven conduct unbecoming (involving as it does failure to make an appropriate assessment of his patient, to obtain informed consent and to obtain advice from a cardiological specialist plus prescribing an inappropriate dose for an inappropriately lengthy period without recommending an intervening period of one month without treatment) is inconsistent with what ought to be expected from a practitioner who acts in compliance with the standards normally observed by those who are fit to practise medicine. The Tribunal finds that the proven unbecoming conduct does reflect adversely on the practitioner's fitness to practise medicine. As the charge has been proved, the Tribunal proceeds to consider the issue of penalty.

Mitigating Factors

27. If the only factors involved in the case were those which have thus far been outlined the case might be thought to have called for the imposition of a significant penalty. It is however necessary to refer to a number of matters to which counsel for Dr Wright drew our attention.

28. We refer first to Dr Wright's prompt acknowledgment, after he received the patient's complaint, of the deficiencies in his professional conduct in relation to the tenuate dospan and to the apology that he then extended to her. Secondly we note his acknowledgment of the position in his letter to the Commissioner (see paragraph 18 above). Thirdly Dr Wright intimated, through his counsel, at the Directions Conference concerning this matter, that the charge and all of its particulars would be admitted. From then on the patient should not have had the worry which many people experience when faced with the prospect of giving evidence. Fourthly Dr Wright frankly stated to the Tribunal that he fell short of the level he expected of himself and that expected by his patients and colleagues, said that for that he was very sorry and repeated his apologies to the patient. We consider that he has faced up to the quite serious deficiencies in some aspects of his care of the patient in a commendably frank manner.

29. Next we record some of the steps that Dr Wright has taken to improve his professional performance and to prevent such conduct occurring again. He has:

(a) joined a peer review group to discuss cases and prescribing issues;

(b) joined a local education group, run by a large number of Christchurch doctors, and attended monthly meetings on education (which is mostly focused on prescribing);

(c) contributed through research to some of the material presented and been active in the dissemination of educational material;

(d) worked through the accreditation process for the Royal New Zealand College of General Practitioners;

(e) received a letter of confirmation that he has successfully completed Advanced Vocational Education (previously called Accreditation);

(f) received a letter from the Censor in Chief confirming admission to Fellowship on 22.11.2000;

(g) completed a post-graduate diploma in Industrial Health over the last two years;

(h) obtained a list of currently used medications with advice sheets that can be accessed at the time of prescribing medication to give patients the advice that, he agrees, they are entitled to;

(i) introduced flow charts for recording of basic detail and screening tests for patients in

patients' notes in an attempt to avoid missing basic baseline readings;

(j) completed a review of a random sample of notes within the surgery for assessment of accuracy, detail and content the results of which were sent to the College and according to Dr Wright compare favourably with those of his colleagues;

(k) taken on board the advice contained in the Commissioner's report and no longer prescribes tenuate dospan or duromine;

(l) attended a five hour course on cardio-pulmonary resuscitation and gone on to teach colleagues.

30. Dr Wright now has insight into the failings that manifested themselves in his dealings with his patient in relation to tenuate dospan. We accept his statements that he has learned many lessons from that episode and that it gave him the impetus to analyse his performance, seek peer review and improve his future performance. We note that he has received from the Professional Standards Administrator of the Medical Council of New Zealand advice that a competence review would not be required as he had recently undergone an external review as part of his accreditation process. We are impressed with the positive and constructive way in which he has responded to the significant errors which he made in relation to the complainant. We think it is unlikely that he will re-offend.

Submissions

31. Counsel for the Director submitted that the complainant's health was put at risk as a result of the prescriptions and that the complainant feels aggrieved and considers that her health has been lastingly affected by the prescriptions. Counsel noted that while Dr Wright has undertaken various courses, and has benefited from that, the complainant feels that her life has not progressed at all. Counsel acknowledged that Dr Wright had improved his skills significantly since this event and submitted that an appropriate penalty would be a fine plus costs.

32. Counsel for Dr Wright, after referring to Dr Wright's frank and early acknowledgment of his errors and to his apologies, submitted that Dr Wright's actions on the scale of matters that come before this Tribunal are at the low end of seriousness, that Dr Wright had taken significant steps to learn from his mistake and improve his care of his patients and that he

should receive significant credit for his acknowledgment of error, his apologies freely given and his steps to improve his knowledge and performance. It was submitted that the finding of conduct unbecoming was, of itself, a significant matter for a medical practitioner and carries its own punishment.

Counsel also referred to Dr Wright's having suffered as a result of this case and made specific reference to an article (a copy of which was produced to the Tribunal) which appeared in the 26 March 2001 issue of a magazine and named Dr Wright (and outlined the patient's complaints and views about the doctor's prescribing and what she considers are the consequences thereof). Counsel submitted that the article inaccurately linked the patient's ongoing condition to Dr Wright's actions.

(As to this last point, it is apparent that the complainant is convinced that her ongoing tachycardia is a direct result of her being prescribed tenuate dospan. Counsel for the Director, however, frankly acknowledged that on the information available the Director cannot assert this. Given that concession, and the contents of the report from Associate Professor Maling, the Tribunal does not consider that it has been proved that the prescriptions directly caused the ongoing problem.)

Counsel for Dr Wright submitted that the matter could be appropriately dealt with by way of censure and costs.

Decision

33. The Tribunal carefully considered all the submissions made to it. It thinks that there is a good deal of force in the various points made by or on behalf of Dr Wright and that it is appropriate that he should be given credit both for the attitude which he has consistently adopted towards the complaint, and ultimately the charge, and for the commendable steps which he has taken in an attempt to improve his performance and ensure that there is no recurrence of the conduct in question. It also accepts that he has suffered in connection with this matter and it noted at the hearing that he appeared to be under considerable strain.

34. In this case the Tribunal has to deal with a case of proven conduct unbecoming at a level which it regards as involving overall gravity above the middle of the range of seriousness in conduct unbecoming cases. There are, in the Tribunal's view, features of the case which would ordinarily call for the imposition of a significant penalty for the dual purposes of punishing the practitioner and of sending a message to other practitioners that such conduct is unacceptable and cannot and will not be tolerated. This applies with particular force to the failure to obtain the patient's informed consent and to the inappropriate prescribing over an extended period. The Tribunal also considers, however, that Dr Wright is entitled to credit for his commendable response to the complaint, his prompt and repeated apologies and the numerous steps he has taken in an endeavour to improve his performance and avoid a recurrence.

35. The penalties which the Tribunal can impose if, after conducting a hearing on a charge laid under s 102, it is satisfied that a practitioner has been guilty of conduct unbecoming a medical practitioner and that that conduct reflects adversely on the practitioner's fitness to practise medicine are set out in s 110 of the Act. The Tribunal does not, however, have the power to remove a practitioner's name from the register unless he or she has been found guilty of disgraceful conduct in a professional respect which is not the case here. The Tribunal is satisfied that there is no case for suspending Dr Wright or ordering that he may practise only in accordance with conditions. It does however consider that he should be censured, as a formal expression of the Tribunal's disapproval of his conduct, and that he should also be fined.

36. In relation to the possible imposition of a fine the Tribunal notes that in view of a recent decision of the District Court it inquired of counsel for Dr Wright whether there was any information as to Dr Wright's means and responsibilities which counsel wanted to put before the Tribunal. There was not.

37. As to the amount of the fine which it is considered necessary to impose, the Tribunal notes that the maximum fine under the former Act was $1,000 but that the Act provides for a fine of up to $20,000. As a consequence, erring practitioners can expect that fines under the Act will be at a higher level than applied under the previous Act. Nevertheless it is

necessary to bear in mind that this is a case of conduct unbecoming, the lowest of three levels at which a medical practitioner can be charged, and to have regard to that in fixing the amount of the fine.

38. The factors which are to Dr Wright's credit have persuaded the Tribunal that it is proper to deal with him more leniently than would have been appropriate in the absence of those factors. After deliberating for some time, and taking into account all the factors which appeared to it to be relevant, the Tribunal concluded that the appropriate fine was $2,500.

Costs

39. Counsel for the Director accepted that the costs had been reduced significantly by the admission of the charge. She referred to the following passage in *Cooray v Preliminary Proceedings Committee* (High Court, Wellington Registry, AP 23/94, 14 September 1995) at page 9:

> *"It would appear from the cases before the Court that the Council in other decisions made by it has in a general way taken fifty percent of total reasonable costs as a guide to a reasonable order for costs and has in individual cases where it has considered it as justified gone beyond that figure. In other cases where it has considered that such an order is not justified because of the circumstances of the case, and counsel has referred me to at least two cases where the practitioner pleaded guilty and lesser orders were made, the Council has made a downward adjustment."*

She submitted that the Director sought costs to be paid for the investigation and prosecution of the charge. After excluding some costs incurred in relation to a matter irrelevant to this hearing she advised that those costs and expenses were of the order of $6,500.00.

40. Counsel for Dr Wright submitted that so far as costs were concerned in general a 50% starting point may be an appropriate level with a substantial credit to Dr Wright for his guilty plea which has significantly reduced the trauma to the complainant (a valid point) and costs to the Commissioner and the Tribunal.

41. In his written submissions counsel for Dr Wright requested that full details of the costs of the investigation and prosecution be provided and submissions then be filed in writing on the level of costs but when the Chair pointed out that this would inevitably result in the Tribunal having to adjourn the hearing until the information had been provided and the submissions had been received counsel suggested that the penalty, other than costs, be announced on the day of the hearing and costs be dealt with later. The Chair indicated that this was not acceptable to him and counsel, in the interests of achieving finality for his client, then said that if costs were expressed as a figure and not as a percentage he would withdraw his request for information as to the detail of the costs of the investigation and prosecution.

42. However the costs were expressed, the Tribunal considered that before it could properly and fairly fix the quantum of the costs to be paid by Dr Wright it also needed to have a reasonable understanding of the costs and expenses which the Tribunal itself was likely to incur in connection with the hearing and matters incidental to it. Accordingly the Tribunal estimated, as carefully as was possible at the time of its deliberations, those costs and expenses. Its estimate was that the Tribunal's actual costs and expenses, by the time all aspects of the disciplinary process in relation to this charge (including the preparation of this decision) had been completed, were likely to be in the vicinity of $12,000.00.

43. The total costs and expenses were thus likely to be in the vicinity of $18,500.00.

44. The Tribunal decided that in the particular circumstances of the case Dr Wright should be ordered to pay $5,500.00 towards costs and expenses (an amount which was approximately 30% of the total estimated costs and expenses) and announced that amount when it advised its decision at the conclusion of the hearing. The investigation and prosecution costs and expenses were approximately 35%, and the Tribunal's approximately 65%, of the estimated total costs and expenses and the Tribunal therefore considers that the amount of $5,500.00 should be split proportionately. The formal orders will make appropriate provision in this regard.

45. The parties are advised that since the hearing it has been possible to establish the Tribunal's actual costs and expenses. They total more than $12,000.00 and the estimate of those costs and expenses, though realistic, was thus conservative.

Orders

46. The Tribunal, after conducting a hearing on a charge laid under section 102 of the Act against Dr Jonathan Graham Wright of Christchurch, medical practitioner, is satisfied that he has been guilty of conduct unbecoming a medical practitioner and that that conduct reflects adversely on his fitness to practise medicine and orders:

(a) pursuant to section 110(1)(d) of the Act that Dr Wright be censured;

(b) pursuant to section 110(1)(e) of the Act that he pay a fine of $2,500.00;

(c) pursuant to section 110(1)(f) of the Act that he pay:

(i) $1,925.00 towards the costs and expenses of and incidental to the investigation made by the Commissioner and the prosecution of the charge by the Director; and

(ii) $3,575.00 towards the costs and expenses of and incidental to the hearing by the Tribunal;

(d) that a notice under section 138(2) of the Act be published in the New Zealand Medical Journal.

DATED at Wellington this 31st day of August 2001

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T F Fookes

Senior Deputy Chair

Medical Practitioners Disciplinary Tribunal