



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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**PUBLICATION OF
THE NAME OF
THE COMPLAINANT
OR ANY IDENTIFYING
DETAILS IS
PROHIBITED**

DECISION NO: 203/01/80C

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
GRAHAM KEITH PARRY
medical practitioner of Whangarei

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mrs W N Brandon (Chair)

Ms S Cole, Dr J W Gleisner, Dr U Manukulasuriya,
Dr A D Stewart (Members)

Ms G J Fraser (Secretary)

Mrs G Rogers (Stenographer)

LEGAL ASSESSOR: Dr D B Collins QC

Hearing held at Whangarei on Monday 12 and Tuesday 13 November
2001

APPEARANCES: Mr M F McClelland and Ms C Gelston for a Complaints Assessment
Committee ("the CAC")

Mr A H Waalkens for Dr G K Parry.

Supplementary Decision

THIS supplementary decision should be read in conjunction with Decision No. 187/01/80C which issued on 29 January 2002 ("the Substantive Decision").

1. In the Substantive Decision the Tribunal determined that Dr Parry was guilty of conduct unbecoming a medical practitioner and that conduct reflects adversely on his fitness to practise medicine.
2. The Substantive Decision followed a hearing of a charge of professional misconduct laid against Dr Parry by a Complaints Assessment Committee (CAC) convened by the Medical Council of New Zealand. The Particulars of the charge alleged serious deficiencies in Dr Parry's gynaecological practice, namely, that he failed to adequately assess and examine his patient (Mrs A) after she presented with post coital bleeding. Mrs A was referred to Dr Parry by her GP for a specialist consultation.
3. It was alleged that Dr Parry should have visualised her cervix either by naked eye and/or by using a colposcope. Notwithstanding her clinical presentation, Dr Parry did not carry out any internal examination of Mrs A, but carried out an abdominal ultrasound examination only.

4. The Tribunal determined that, taking into account all of the evidence presented at the hearing, and in particular the evidence given by other specialist gynaecologists, the presenting symptoms and the clinical context, Dr Parry's care and treatment given to Mrs A was unsatisfactory. The Tribunal was satisfied that in the circumstances, Dr Parry should have carried out an internal examination, and visualised Mrs A's cervix himself. The Tribunal was satisfied that his conduct in failing to adequately examine Mrs A warranted sanction, but at the lower end of the scale of professional disciplinary offences provided for in section 109 of the Medical Practitioners Act 1995 ("the Act").
5. The Tribunal also determined that the fact that there was (fortuitously) a favourable outcome for a patient does not excuse poor or inadequate care on the part of the practitioner, just as an unfavourable outcome is not, *per se*, culpable. The Tribunal must assess the care or treatment under review in terms of the relevant standards applicable at the time the conduct occurred.

Submissions on penalty

Submissions on behalf of the CAC

6. On behalf of the CAC, Mr McClelland referred to the facts giving rise to the charge which are set out in detail in the Substantive Decision. He referred to the serious deficiencies alleged in respect of Dr Parry's management of Mrs A's care, and specifically to Dr Parry's alleged failure to adequately assess Mrs A's cervix.
7. Mr McClelland referred to Dr Parry's acceptance at the hearing that he had done nothing to exclude a malignancy of the cervix, and also that he could have visualised the cervix either with the naked eye or colposcope.
8. Dr Parry defended his failure to carry out a visual examination of Mrs A's cervix on the basis that he relied on the reported results of a vaginal examination carried out by Mrs A's general

practitioner, whom he believed was a careful and accurate practitioner with some expertise in womens' health, and also he relied on Mrs A's history of normal smears.

9. Dr Parry conceded that whether or not he carried out such an examination of a patient referred to him for specialist care depended upon his opinion of the referring GP and what was reported, rather than the patient's presenting symptoms.
10. As to the penalty which Mr McClelland submitted was appropriate, he referred first to the Tribunal's power to impose conditions on Dr Parry's practice. As the result of orders made by this Tribunal (and subsequently by the appellate Courts) in another matter, Dr Parry is currently prohibited from practising as a specialist gynaecologist. He is permitted to practise in his sub-specialty, which may involve his performing ultrasound examinations relevant to gynaecological practice.
11. As a result of those orders, Mr McClelland submitted that it is difficult to envisage any practical conditions which this Tribunal could now impose on his practice. Mr McClelland submitted that "*Dr Parry's obvious over reliance on ultrasound does not pose a risk so long as he does not practise as a gynaecologist.*"
12. Accordingly, the CAC does not consider that anything would be gained by the imposition of conditions, or that additional conditions are necessary to protect the public's health and safety. However Mr McClelland suggested that a concern for public safety would arise if Dr Parry was able to practise gynaecology again at any time in the future, particularly if he had not practised as a gynaecologist for some time prior to the recommencement of his practice. The Tribunal's findings in this present case, and in other cases, would have to be addressed prior to Dr Parry being allowed to recommence practise as a gynaecologist.
13. On behalf of the CAC, Mr McClelland submitted that Dr Parry should be censured and a fine should be imposed to reflect the seriousness of the misconduct established.

14. As to costs, Mr McClelland referred to the often cited case of *Cooray v Preliminary Proceedings Committee* (unreported AP 23/94, Wellington Registry, 14/9/95, per Doogue J). In that case, the court held that “*it would appear from the cases before the Court that the [Medical Council] in other decisions made by it has in a general way taken 50% 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.*”
15. Finally, Mr McClelland submitted that Dr Parry’s name should be published together with details of the Tribunal’s findings.

Submissions on behalf of Dr Parry

16. In response, Mr Waalkens objected to Mr McClelland’s reference to other professional disciplinary cases involving Dr Parry. Mr Waalkens submitted that the maximum fine the Tribunal could impose (by virtue of the date of the occurrence of the conduct giving rise to the charge) was \$1,000. However the factual circumstances which gave rise to the Tribunal’s finding that this particular case and the offending involved was at the “*lower end of the scale of such offences*”, coupled with Dr Parry’s current financial and professional predicaments are such that any fine would be unreasonable.
17. Mr Waalkens submitted that the publicity which Dr Parry has received in relation to this case alone is way out of proportion with what other professionals face in similar circumstances. This negative publicity has compounded Dr Parry’s difficulties in trying to re-establish himself in medicine in accordance with the conditions imposed on him by the Court and now approved by the Medical Council.
18. Mr Waalkens also submitted that Mrs A did not suffer any adverse consequence from the omissions or short comings in respect of Dr Parry’s care.

19. Mr Waalkens advised the Tribunal that Dr Parry is not presently working in medicine and that the Tribunal's penalty in this case will be important in the context of Dr Parry's ability to rehabilitate himself into the medical profession.
20. In relation to the imposition of any fine and or costs, Mr Waalkens suggested that Dr Parry's financial predicament could not be worse, and he currently has a part time job with a Government Department earning \$400 per week which income does not cover his monthly expenses. In summary, said Mr Waalkens, Dr Parry's financial situation is such that the imposition of a fine would be very difficult for him, so to is the position in relation to costs. Mr Waalkens urged the Tribunal to take into account that Dr Parry has fully co-operated with the Tribunal and the CAC in relation to its investigation of this complaint and subsequent charge.

Decision

21. The Tribunal has carefully considered all of the submissions made, and its findings made in the Substantive Decision. The Tribunal is satisfied that the following penalties are appropriate:
 - (a) Dr Parry should be censured;
 - (b) a fine in the amount of \$250 (the maximum fine under the 1968 Act being \$1,000) is fair and reasonable;
 - (c) Dr Parry is to pay 10% of the costs and expenses of and incidental to the inquiry by the CAC in relation to the subject matter of this charge and the prosecution of the charge and the Tribunal's hearing of the charge. This is a modest order of costs, but the Tribunal is satisfied that it fairly takes into account the serious nature of its findings, and Dr Parry's personal, professional and financial circumstances;
 - (d) while the Tribunal has determined that no conditions can practically be imposed if Dr Parry is not currently practising as a gynaecologist, in the event he does seek to resume his gynaecological practice then the Tribunal considers that Dr Parry should practise only under the supervision of another specialist appointed by the Medical Council for a period of at least 2 years.

Reasons

22. The Tribunal considers that Dr Parry has very little insight into his ability to maintain acceptable professional standards. The Tribunal is satisfied that its findings in this present case demonstrate that Dr Parry's standards of practise as a specialist gynaecologist fall short of the standards which the public of New Zealand are reasonably entitled to expect. A failure to maintain acceptable standards, particularly by a specialist practitioner to whom GPs refer their patients for review and/or specialist advice, creates a risk to the health and safety of women such that a period of monitoring of Dr Parry's practice is required.
23. In making this finding, the Tribunal has taken into account Mr Waalkens' advice that Dr Parry's practice "*has already been through substantial and unprecedented auditing*" and that the audit report of "*all gynaecological cases involving complaints of bleeding or anything related thereto ... was entirely satisfactory demonstrating that Dr Parry's error rates were well within acceptable rates.*" Whatever the terms and findings of that report/audit are, the Tribunal considers that it must make its decision as to the penalty it considers is appropriate, and the nature and extent of any conditions it may impose by virtue of s.110 of the Act, solely on the basis of the evidence provided to it, and its determination of the charge.
24. At the hearing, Dr Parry gave evidence to the Tribunal of his sub-specialty practice in ultrasound examination. The Tribunal considers that to maintain an acceptable standard of practise in a sub-speciality area, a significant proportion of the practitioner's resources, practise and ongoing education must be devoted to maintaining his or her professional skills and knowledge in the sub-specialty area, which may limit the practitioner's ability to maintain his or her skills and knowledge in their broader specialty area. In Dr Parry's case, the Tribunal is concerned that his focus on his ultrasound practice has impacted upon his ability to maintain his professional skills and knowledge as a specialist gynaecologist.

25. A further issue is that Dr Parry is one of only a very small number of practitioners working in his sub-specialty area. This raises issues of 'quality control' as, because he is practising in such a narrow field, it is difficult for him, and indeed for any employer, to monitor the quality and safety of his practice.
26. Accordingly, the Tribunal considers that it is both desirable and necessary that, in the event Dr Parry decides to recommence a specialist gynaecology practice, he is able to update his professional skills and expertise and/or to practise under supervision for a period of time to ensure that he meets appropriate standards. The Tribunal emphasises that it understands that Dr Parry is not currently practising as a gynaecologist and the requirement that Dr Parry practise under supervision is to take effect only in the event he decides to recommence practise as a specialist gynaecologist at some future time.
27. As to the other penalties imposed, the Tribunal is satisfied that it is appropriate that Dr Parry is censured and that its orders that Dr Parry should pay a fine and a proportion of the costs incurred by the CAC and the Tribunal, take into account the submissions made by both of Mr Waalkens and Mr McClelland.
28. The Tribunal has consistently taken the approach that orders it makes in relation to penalty must fairly take into account the practitioner's individual circumstances and, although as a general rule *Cooray* is applicable, it is equally satisfied that its orders as to the level of and the proportion of costs ordered against Dr Parry are appropriate in the circumstances.
29. The Tribunal's decision is unanimous.

Orders

30. The Tribunal orders as follows:
 - (i) Dr Parry is censured;
 - (ii) he is to pay a fine in the sum of \$250;

- (iii) he is to pay 10% of the costs and expenses of and incidental to the CAC's inquiry in relation to the subject matter of the charge, the prosecution of the charge and the Tribunal's hearing;
- (iv) in the event that Dr Parry seeks to resume his gynaecological practice then, for a period not exceeding 2 years from the date of his resuming his specialist gynaecological practice, he is to practise as a specialist gynaecologist only under the supervision and/or oversight of a specialist obstetrician and gynaecologist appointed by the Medical Council of New Zealand.
- (v) a notice under section 138(2) of the Act is to be published in the New Zealand Medical Journal.

DATED at Wellington this 11th day of June 2002.

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W N Brandon
Chairperson
Medical Practitioners Disciplinary Tribunal