



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO: 200/01/88C

IN THE MATTER of the Medical Practitioners Act
1995

-AND-

IN THE MATTER of disciplinary proceedings against
WARREN WING NIN CHAN
medical practitioner of Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on 9 May 2002

PRESENT: Ms P Kapua (Chair)
Dr J C Cullen, Dr R S J Gellalby, Dr C P Malpass, Mrs H White
(Members)
Mr B A Corkill (Legal Assessor)
Ms G J Fraser (Secretary)

APPEARANCES: Ms K Davenport for a Complaints Assessment Committee.

No appearance by Dr Chan

Application for Orders of Discovery

1. The Tribunal has received an application for orders of discovery against Dr Chan. Copies of the application have been emailed to Dr Chan and posted to his box number in Sydney and have been faxed to him with a confirmation of fax dated 1 May 2002 and 6 May 2002. The last communication from Dr Chan was on 24 April 2002 regarding patient records, but there has been no response from Dr Chan since that date.
2. The Tribunal is satisfied that every reasonable effort has been made to communicate with Dr Chan and that it is appropriate to deal with this application (and the application to amend described below) in his absence.
3. As a preliminary issue, Ms Davenport sought to amend the application to include Carolyn Carr to the list in paragraph 1(v) of the application. The Tribunal grants the amendment as requested.
4. The application seeks the following orders:

“1. *Requiring Dr Chan to disclose and to provide copies of:*

- (i) *His appointment book(s) for the Australasia Cosmetic Surgery Centre from 1 April 2001 until 30 July 2001*
- (ii) *To disclose on oath the bank or banks in which he banked the proceeds of the work of the Australasia Cosmetic Surgical [sic] Centre.*
- (iii) *Provide copies of bank statements for the bank or banks set out in (ii) from 1 April 2001 to 30 July 2001.*
- (iv) *To provide copies of the banking deposit books/records which show the monies banked to these accounts.*
- (v) *To provide patient notes and records for complainants Ena Elia, Esmail Sabzivand, Alice Doeschate, Nicola Poole and Carolyn Carr.*

2. *Requiring any bank with whom Dr Chan or the Australasia Cosmetic Surgery Centre had an account to provide to the Tribunal copies of statements for this business for the period 1 April 2001 to 30 July 2001.”*

5. While it is normal practice to obtain the patient notes and records of complainants, the application relating to bank records whether from Dr Chan or from the banks is less usual. Upon advice from Mr Corkill and with the agreement of Ms Davenport, it was agreed that a further amendment should be made in the light of the information already offered by Dr Chan regarding patient records and that is that the wording in paragraph 1 should be amended to read:

“Requiring Dr Chan to disclose the whereabouts of and to provide copies of”.

6. Under clause 7 of the First Schedule of the Act the Tribunal has the power to require any information to be produced for the purposes of dealing with matters before it. As Mr Corkill pointed out, the issue is essentially one of relevance. It would appear that the purpose for requiring bank records is essentially to substantiate one charge that alleges that Dr Chan carried out surgery at a time when he was suspended from practising medicine. It is not clear whether the bank statements will assist and the Tribunal is of the view that it will not be greatly assisted by making orders for the provision of bank statements and that part of the application is therefore declined.
7. However, a number of members of the Tribunal did consider that it may be assisted by the provision of the Operations Register and the Drugs Register of the Australasia Cosmetic Surgery Centre from 1 June 2001 until 31 July 2001. The Tribunal proposes to make such an order on its own motion.

Application to amend charges

8. The second matter dealt with amendments proposed to be made to the charges against Dr Chan and the inclusion of a further composite charge relating to the same complaints. Dr Chan has been served with copies showing the amendments that have been made to the charges and the composite charge. These amendments are made as a result of the evidence that has been prepared in respect of the substantive hearing and clarify the charges. The Tribunal accepts the amendments and considers that there is no prejudice to Dr Chan, particularly given that he has been served with notice of them almost six weeks prior to the scheduled hearing.

9. In respect of the composite charge the Tribunal acknowledges that an “*omnibus*” or composite basis for charges is possible. Ms Davenport indicated that the composite charge was being pursued on a cumulative basis and separate findings were not required in respect of each particular. It was Ms Davenport’s submission that the composite charge was a “*fall back position*” and there was discussion concerning whether the composite charge was actually being placed before the Tribunal in the alternative. In the absence of submissions from the respondent in respect of this matter, the Tribunal was of the view that it would defer consideration of the inclusion of a composite charge until the substantive hearing.
10. The Tribunal therefore orders as follows:
- (a) The charges in respect of the complaints relating to Lisa Clement, Rowan Barber, Ena Elia, Alice Doeschate, Nicola Poole, Esmail Sabzivand and Jacqui O’Connell be amended as set out in the charges dated 26 April 2002 that have been served on Dr Chan.
 - (b) Dr Chan is to disclose the whereabouts of and to provide copies of patient notes and records for Ena Elia, Esmail Sabzivand, Alice Doeschate, Nicola Poole and Carolyn Carr by 28 May 2002.
 - (c) The Australasia Cosmetic Surgery Centre is to provide for inspection to the Tribunal its Operation Register and Drugs Register for the period 1 June 2001 until 31 July 2001. Inspection is to take place before 28 May 2002, unless alternative arrangements are made prior to that date.
11. Application for discovery of bank statements is declined and the Tribunal will defer consideration of the matter of the composite charge until the Tribunal convenes for the substantive hearing on 17 June 2002.

DATED at Auckland this 22nd day of May 2002

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Prue Kapua

Deputy Chair

Medical Practitioners Disciplinary Tribunal