

Medical Practitioners Disciplinary Tribunal

*PO Box 5249 Wellington Telephone (04) 499-2044 Facsimile (04) 499-2045
All Correspondence should be addressed to The Secretary*

DECISION NO: 36/97/16D

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 93(1)(b)
of the Act against **JOHN
DANNEFAERD NEALIE**
medical practitioner of
Waimauku

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mr P J Cartwright (Chair)

Dr R S J Gellatly, Dr J M McKenzie, Dr L F Wilson,

Mr G Searancke (Members)

Ms G J Fraser (Secretary)

Mrs G Rogers (Stenographer)

Hearing held at Auckland on Friday 20 February 1998

APPEARANCES: Ms K G Davenport, Director of Proceedings
Mr H Waalkens for Dr Nealie ("the respondent").

SUPPLEMENTARY DECISION:

THIS supplementary decision should be read in conjunction with Decision No. 28/97/16D which issued on 23 April 1998.

1.1 AT paragraph 11.4.7 of Decision No. 28/97/16D was noted deferral by the Tribunal of the amount of contribution payable by Dr Nealie towards the costs and expenses listed in paragraph 11.4.3 of the primary Decision.

1.2 MR Waalkens had submitted:

"Section 110(1)(f) allows an order (in part or in whole) of the costs and expenses *of and incidental to* ... (iv) the hearing by the Tribunal.

Plainly, pre-hearing and post-hearing costs do not fall within this. On the basis that the *Kaye* case (refer paragraph 19 of my penalty submissions) states that travelling and other administrative charges cannot be charged in the absence of a clear mandate, it is apparent that the travel costs component, accommodation and meals, and telephone and tolls are costs which plainly fall within the administrative/travel cost category and should be excluded."

1.3 **THE** Tribunal sought an opinion from Mr B A Corkill, Barrister, as to the scope of Section 110(1)(f) of the Medical Practitioners Act 1995, specifically in light of the judgement of the High Court in *Kaye v Auckland District Law Society* [1998] 1 NZLR 151 (Full Bench).

1.4 **MR** Corkill concluded his seven page opinion of 23 April 1998 with these comments:

- "(a) The fixing of costs requires the exercise of a discretion. The starting point is, what is a reasonable contribution in the particular circumstances?
- (b) *Kaye's* case is not a direct precedent for the purposes of the Medical Practitioners Act.
- (c) There is no indication of a statutory intention to exclude particular disbursements, such as travel and accommodation of the Tribunal.
- (d) The previous two step approach (step one, consideration of whether total costs are reasonable, step two, apply an appropriate percentage in the circumstances of the case) continues to be a sensible method of dealing with the costs issue, so long as the Tribunal considers it appropriate in a given case.
- (e) So that the affected party has the opportunity of commenting on the issue of reasonable costs, detail as to the make up of those costs (Tribunal and CAC/DP) should be provided so as to give opportunity for comment."

1.5 **THE** Tribunal does not agree with Mr Waalkens that the pre-hearing and post-hearing costs of the Tribunal do not fall within the ambit of Section 110(1)(f) of the Act. Rather the Tribunal agrees with Mr Corkill's opinion there is no indication of a statutory intention to exclude particular disbursements, such as travel and accommodation of the Tribunal.

1.6 **ACCORDINGLY**, the Tribunal has resolved that Dr Nealie should make a contribution of 50% of all the costs and expenses of the Tribunal which are listed in paragraph 11.4.3 of the primary decision. This payment will amount to \$6,455.51.

1.7 **IN** all other respects Decision No. 28/97/16D is confirmed.

DATED at Auckland this 2nd day of June 1998

.....

P J Cartwright

Chair

Medical Practitioners Disciplinary Tribunal