Medical Practitioners Disciplinary Tribunal

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DECISION NO: 74/98/18D

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 **THOMAS NIGEL ELLISON** medical practitioner of Raglan

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mr P J Cartwright (Chair)

Dr I D S Civil, Dr R S J Gellatly, Dr B J Trenwith,

Mrs H White (Members)

Ms G J Fraser (Secretary)

Mrs G Rogers (Stenographer)

Hearing held at Hamilton on Monday 18 May 1998, Monday 17 May 1999 and Tuesday 18 May 1999

APPEARANCES: Mrs K G Davenport for the Director of Proceedings

Mr H Waalkens for Dr T N Ellison.

1. THE CHARGE:

1.1 THE Director of Proceedings under the Health & Disability Commissioner Act 1994 and pursuant to Section 102 of the Medical Practitioners Act 1995 charges Dr Ellison that between July 1996 until August 1996 his overall management and care of his patient Francis Wall was inadequate and was not carried out with reasonable skill and care.

1.2 WITHOUT limiting the totality of the charge the particulars of the charge are that Dr Ellison failed to:

(a) Adequately diagnose and act appropriately on Mr Wall's clinical problems from 20 July 1996 until his admission into hospital on 15 August 1996;

(b) Arrange a prompt admission into hospital for Mr Wall;

(c) Appropriately annotate his medical records with the quantity or the length of course of medication prescribed for Mr Wall;

(d) Refused to act upon his patient's request to be admitted to hospital on or about the week of 11 August 1996;

(e) Adequately treat and monitor his patient Mr Wall during the period 20 July to 15 August 1996.

such conduct reflecting adversely upon fitness to practise medicine, being professional misconduct.

2. DOCUMENTARY EVIDENCE:

2.1 **TO** assist in its consideration of the charge against Dr Ellison counsel provided the Tribunal with an agreed bundle of documents. The bundle comprises Dr Ellison's notes, Health Waikato Hospital records and correspondence between Dr Ellison and the Health & Disability Commissioner.

3. BACKGROUND SUMMARY OF EVENTS:

3.1 **DR** Ellison visited Mr Wall at his home on 20 July 1996. This was the first contact Dr Ellison had had with Mr Wall for some two years. At that time Dr Ellison recorded in the notes that Mr Wall had severe flu and he prescribed Augmentin 500mgs, a broad spectrum antibiotic, and Linctus Pholcodine Forte, a cough suppressant.

3.2 **DR** Ellison reviewed Mr Wall at his surgery on 7 August 1996, some 2 ½ weeks after his first consultation. Dr Ellison recorded that Mr Wall was improving slowly. On this occasion he prescribed Ceclor at 250 mgs three times a day. As well Dr Ellison referred Mr Wall for blood tests which included tests for viruses and legionnaires disease. Dr Ellison also noted that the offer of a chest x-ray was not accepted.

3.3 **DR** Ellison next heard from Mr Wall on the evening of Sunday 11 August 1996, through a message left on his answer phone after returning from a weekend off in Auckland. Dr Ellison rang Mr Wall that evening and it was arranged that there would be another consultation the next

day 12 August 1996. At that consultation Mr Wall presented with pyrexia, generalised aches, and on auscultation, definite indications of pneumonia (R upper lobe). Dr Ellison's note records that Mr Wall had "*RS ++*". Dr Ellison's note also records Mr Wall was apparently feeling very weak and again Dr Ellison suggested an x-ray examination of the chest which was organised for the following day. Dr Ellison's advice to Mr Wall was to go to hospital, the note recording that he declined this option. Dr Ellison then gave Mr Wall an injection of antibiotic called Lincocin and started him on Doxycycline caps.

3.4 **MR** Wall had a chest x-ray on 13 August 1996. An area of increased density was noted in the right upper lobe. The possibility of pneumonic consolidation and a mass lesion was raised. Follow-up films were advised. The note of 13 August 1996 made by Dr Ellison records that Mr Wall again refused hospitalisation.

3.5 **ON** 15 August 1996 Dr Ellison visited Mr Wall who was subsequently admitted to Waikato Hospital. During this admission pulmonary embolism was diagnosed. Mr Wall died following a cardiac arrest two days after admission on 17 August 1996.

3.6 **THE** Tribunal will now proceed to a separate consideration of each particular of the charge. Specifically that exercise will focus on particulars b, c, d and e of the charge. Thereafter the Tribunal will consider globally the contentions that Dr Ellison's management and care of Mr Wall was inadequate, was not carried out with reasonable skill and care and that he failed to adequately diagnose and act appropriately on Mr Wall's clinical problems from 20 July 1996 until his admission into hospital on 15 August 1996. It seems to us that there is some duplication by reference to these last mentioned matters.

4. PARTICULAR (b) AND PARTICULAR (d):

Failure to arrange a prompt admission into hospital for Mr Wall and refusal to act upon Mr Wall's request to be admitted to hospital on or about the week of 11 August 1996.

4.1 **IT** would seem that these two allegations can conveniently be dealt with together.

4.2 **ON** this aspect of the matter similar evidence was given by three members of the late Mr Wall's family.

4.3 **A** daughter, Paula Dawn Devenie, lived in Hamilton, so for the three week period her father was sick she did not see him but spoke to him on the telephone. During that time her father did not say anything to her about wanting to go into hospital or discuss with her any reluctance to go into hospital. Mrs Devenie says that during her father's hospitalisation he told her that the hospital had told him that he ought to have been admitted to hospital three weeks earlier. He said to her then *"I'll get that bastard when I get out of here"*.

4.4 **SIMILAR** evidence was given by another daughter, Cherry Smith. She did not visit her father during his illness at home but spoke with him for short periods on the telephone. On visiting her father in hospital he expressed his anger about Dr Ellison saying *"Now I'm in the right place, they'll give me the proper treatment ...I'll get that bastard, I'll be definitely changing my bloody doctor"*.

4.5 **THE** third member of the family to give evidence for the Director of Proceedings was Dawn Marjorie Wall, widow of the late Mr Wall. It will be recalled there was mentioned in the

background section at the commencement of the Decision of Dr Ellison having recorded in his notes for the consultations of 12 and 13 August of Mr Wall having refused Dr Ellison's offer of hospitalisation. Mrs Wall refuted the truth of these statements, explaining that her husband was desperate to get into hospital and that at least by the evening of 14 August she was sure her husband would not have declined hospitalisation. She said her husband said to her *"I do not want his damn injection I want to go to hospital"*. Dr Ellison then wrote the letter of referral for admission. To Ms Davenport Mrs Wall added that Mr Wall never had any fear of x-rays or hospitals that she was aware of. Also, in answer to a question from Ms Davenport, Mrs Wall explained that her husband did not discuss with her the suggestion claimed by Dr Ellison that he be admitted to hospital. Mrs Wall said she was certain her husband would not have refused to be admitted to hospital. She said if Dr Ellison was so concerned that her husband had declined to be admitted to hospital, which she didn't think possible, that Dr Ellison could perhaps have talked to her about the situation, certainly if he was so concerned as he made himself out to be.

4.6 **ON** the issue of hospitalisation, the alleged failure to arrange a prompt admission and refusal to act on Mr Wall's claimed request to be admitted to hospital, evidence on behalf of Dr Ellison was given by himself and his wife. Additionally Dr Thomas gave character evidence on behalf of Dr Ellison.

4.7 **DR** Ellison confirmed the references in the notes made by him on 12 and 13 August 1996 to the effect that it would be sensible to admit Mr Wall to Waikato Hospital but that on both occasions Mr Wall had declined hospitalisation. Dr Ellison went on to explain that when he visited Mr Wall at his home on 15 August 1996, that on this occasion he did agree to go to hospital but he said Mr Wall expressed a wish to go to hospital by private car. After making the appropriate

arrangements and writing a referral note Dr Ellison learned, on his return to his surgery about half an hour later, that Mrs Wall had rung requesting an ambulance for her husband which Dr Ellison said he immediately organised.

4.8 **DR** Ellison concluded his formal brief of evidence on this note:

"I do have no hesitation in apologising to the family that they feel that I should have been more proactive in having him admitted to hospital at an earlier stage. I have always practised with the belief that the patient has the right to decide for him or herself and at all relevant times I had no doubt that Mr Wall had made his choice not to go into hospital. With hindsight, I wish I had pushed him a lot harder in respect of the earlier recommendation that he go to hospital, as discussed above, on the 12th of August. Prior to that, I do not believe, and do not consider now, that his condition required hospitalisation."

4.9 **PERIPHERAL** to the two particulars of the charge concerning failure or refusal to arrange Mr Wall's prompt admission into hospital, is a prosecution contention that Dr Ellison made false notes concerning his proposals to hospitalise Mr Wall. In cross examination Ms Davenport put it to Dr Ellison:

"... You didn't in fact offer Mr Wall hospitalisation on the dates when you noted until the family came to see you on the 17th and said why didn't you put dad in hospital and you went back with a different pen and wrote these notes in ..."

Dr Ellison replied: *"I disagree totally."*

4.10 **THE** Tribunal has had the benefit of examining the original notes made by Dr Ellison. It is correct that some of the notes written on the specified dates appear in different ball pen colours, some red, others blue and a minority in black.

4.11 **IN** acknowledging to Mr Waalkens in examination in chief that a number of the entries were made in different pen, Dr Ellison explained:

"... there is nothing sinister in this. Normally in my surgery I have placed on my desk four or five pencils on the R/hand side and I start to write - if I have to see a patient to do an examination, or if the phone goes - depending on that, if I have to do further examination of the patient I will go and look and then go and jot something else down. I have never worried about what coloured pen it should be."

Dr Ellison clarified, however, that with result of blood tests, normally he would write them up with a red biro. Dr Ellison amplified that he provided the same explanation to the Health & Disability Commissioner concerning this same issue.

4.12 **IT** was Dr Thomas' evidence that Dr Ellison recommended quite timely admission of Mr Wall to hospital on 12 August 1996, which was apparently declined. Dr Thomas explained he was not in a position to make any assessment of that issue beyond saying he had known Dr Ellison for some years (although not a close friend as such) and that he certainly regarded him as a person who would tell the truth and not make up stories.

4.13 **FINALLY** on the question of hospitalisation there is Mrs Ellison's evidence to be considered. She said she remembered this case as an unusual one in respect of Mr Wall's wish not to go to hospital. She said she remembered at the time being aware that her husband had requested Mr Wall's admission to hospital for his worsening condition, and in particular she remembered overhearing her husband's telephone conversation with Mr Wall on the 14th of August 1996. It was Dr Ellison's evidence that during that telephone conversation that he told Mr Wall he must go to hospital. Dr Ellison said Mr Wall did not want to go to hospital but he agreed that he would come and see him the next morning and discuss it further. Dr Ellison said he replied that he would come and see Mr Wall at his home at 9 o'clock the next morning. Mrs Ellison said she remembered at the time her husband saying in a quite emphatic voice words on the telephone to the effect that Mr Wall should go to hospital. She said she did not recall precisely what words

he used but she recalled very well the message behind the words. Mrs Ellison explained she remembered this because it was quite unusual for her to hear her husband speaking like that. She said whilst his tone was not harsh, nonetheless it was unusual for her husband to speak like that to a patient as he was normally very softly spoken. At the time she said she recalled wondering to whom her husband was speaking. At the end of the discussion she queried him about it. Her husband explained he had recommended Mr Wall go to hospital but that he had declined at that stage.

DISCUSSION AND FINDING:

4.14 **THE** first aspect of the hospitalisation issue, which probably should be viewed in a clinical context, is the alleged failure to arrange a prompt admission into hospital.

4.15 **DR** King, a general practitioner of Wellington, gave evidence for the Director of Proceedings. Although Dr King expressed some concerns about a number of clinical decisions which Dr Ellison made in the course of his care and treatment of Mr Wall, none of those criticisms were directed to a failure on the part of Dr Ellison to arrange a prompt admission into hospital for Mr Wall. We find it surprising that no attempt was made by Dr King to address this aspect in his evidence in chief.

4.16 **IT** may be a subtle irony that Ms Davenport's re-examination of Dr King elicited from him a response which we think probably provides a satisfactory defence to particular (b) of the charge. Ms Davenport asked him if hypothetically Dr Ellison had not suggested hospitalisation on the dates shown in the notes, when he thought it would have been appropriate for him to have considered that. It was Dr King's response that hospitalisation depends on the clinical severity

of the patient, and to some extent the patient's own assessment as well. Looking at the notes Dr King explained he thought it was actually very difficult to determine when hospitalisation would have been appropriate. Dr King agreed not necessarily all pneumonias need hospitalisation. Dr King inferred that listening to Mrs Wall give her evidence had not necessarily helped him clarify the issue of an appropriate point in time to hospitalise in this case.

4.17 **LEAVING** aside any criticism by Dr King of Dr Ellison's note taking, which he conceded under cross-examination was *"... not such a big deal"*, the evidence which Dr King gave under cross-examination accords substantially with the evidence of the three defence witnesses.

4.18 **DR** Ellison said he had no hesitation in apologising to the family for feeling that he should have been more proactive in having Mr Wall admitted to hospital at an earlier stage. Nevertheless Dr Ellison was emphatic that prior to 12 August 1996 he did not believe, and furthermore does not consider now, that Mr Wall's condition required hospitalisation. We accept that explanation because generally it is corroborated by the evidence of Dr Thomas and Dr Karalus.

4.19 **DR** Thomas described Dr Ellison's recommendation of hospitalisation on 12 August 1996 as being *"quite timely"*.

4.20 **LIKEWISE** Dr Karalus commented on the implications that pneumonia is a severe infection which required Mr Wall's earlier hospitalisation. Dr Karalus explained that the medical literature which he has studied (in particular a big study in the United Kingdom) would indicate that only 20% of adults with pneumonia have required hospitalisation.

4.21 **OUR** conclusion is inevitable, that particular (b) of the charge has not been established to anything approaching the necessary standard.

4.22 **THE** second aspect of the hospitalisation issue requiring our consideration is the contention that Dr Ellison refused to act on Mr Wall's request to be admitted to hospital on or about the week of 11 August 1996.

4.23 **IN** her closing submissions Ms Davenport explained that central to the charge faced by Dr Ellison is his credibility. Because it is common ground that the crux of the charge is the allegation of failure to hospitalise, it is appropriate to deal with the issue of Dr Ellison's credibility at this point. Ms Davenport asked the Tribunal to take into account a number of matters which she argued supported the general proposition that Dr Ellison should not be believed when considering his credibility when compared with the family of Mrs Wall.

4.24 **WE** do not accept the matter is quite that straight forward. The first point made by Ms Davenport was by reference to the interim suppression of name order which the Tribunal later revoked when it was discovered that Dr Ellison had misled the Tribunal concerning an earlier conviction before the Medical Practitioners Disciplinary Committee. In revoking its interim suppression of name order Ms Davenport submitted such revocation turned on rejection of Dr Ellison's credibility on that occasion.

4.25 **IN** our view that is an over-simplification of the reasons for revocation. Expressly the Tribunal stated it was unnecessary to make any finding arising out of the evidence given by Dr and Mrs Ellison. In re-examining, and ultimately revoking interim name suppression, the Tribunal

determined that it was not necessary to make a finding as to whether Dr Ellison lied or was simply forgetful. Evidence has been received that Dr Ellison had become very forgetful during the relevant time. Thus we consider it is open to the Tribunal to assess credibility without regard to the unfortunate background which resulted in revocation of the interim suppression of name order. However whether, as Ms Davenport submitted, the Tribunal is going to have to make a finding of whether it believes the evidence of Dr Ellison as compared with the evidence given by members of the Wall family, is a moot point. In her evidence in chief Mrs Wall stated that on the night of 14 August 1996 she heard her husband ring Dr Ellison *"and demand to go to hospital"*. When questioned Mrs Wall retracted and said she did not recall her husband telling Dr Ellison during his telephone call on that night that he wanted to go to hospital. Mrs Wall added *"I'm feeling confused about it [the recall] at the moment"*.

4.26 **IN** referring to the two references in Dr Ellison's notes to Mr Wall *"refused hospitalisation"* and *"again refused hospitalisation"*, Mrs Wall said *"Frank was feeling so unwell that I know he would not have refused hospitalisation"*. Although we know from the evidence of Mrs Wall her belief that her husband *"was desperate to get into hospital"*, it is difficult for us to understand the grounds on which this belief was founded. The particular of the charge under focus is that Dr Ellison refused to act on Mr Wall's request to be admitted to hospital on or about the week of 11 August 1996. Apart from the occasion of Mr Wall's telephone call on the night of 14 August, from which Mrs Wall subsequently resiled, she has not recounted any instance of when Mr Wall requested admission to hospital. In answer to a question from Ms Davenport Mrs Wall explained she did not recall her husband mentioning Dr Ellison at all during the two days he was in hospital before he died. If Mr Wall was so anxious to have been admitted to hospital, one could reasonably expect him to have mentioned the matter to his wife at some stage. We agree

with Mr Waalkens when he said in his closing submissions *"... Mrs Wall gave no such evidence about that [hospitalisation request] and plainly she was the person closest to Mr Wall"*.

4.27 **OUR** assessment of Mrs Wall's evidence is that she was confused (quite understandably so) and that she was certainly not sure whether her husband had been asking Dr Ellison to admit him to hospital.

4.28 **THEN** there is the evidence of Mr Wall's two daughters. We do not consider their evidence is really any more helpful than the evidence of Mrs Wall in establishing that Dr Ellison refused to act on a request by Mr Wall to be admitted to hospital.

4.29 **SIGNIFICANTLY** Mrs Devenie said during telephone conversations over the three week period her father was sick, that he did not say anything to her about wanting to go into hospital.

4.30 **THE** family evidence closest to this particular of the charge was given by Mrs Smith. She said her father kept expressing how he was not at all happy with Dr Ellison's treatments.

4.31 **THE** complaint arose because Mr Wall's family felt strongly because of comments made by Mr Wall when in hospital, that Dr Ellison had not promptly admitted him to hospital, and had not promptly treated him. For particular (d) to be made out there would need to be evidence from family members which we should prefer over the evidence of Dr Ellison. No such evidence had been adduced. We believe the genesis for the families unease by reference to particular (d), probably arises as a result of Mr Wall having told family that the hospital had told him that he

ought to have been admitted to hospital some three weeks earlier. For obvious reasons the Tribunal is not able to place any reliable weight on this hearsay evidence.

4.32 **ALSO** of relevance to particular (d) is the observation of Dr Karalus, having read the complainants statements of evidence, that no-one had stated that Dr Ellison had obstructed Mr Wall in his desire to get to hospital, or that he did anything to impede his admission.

4.33 **THE** Tribunal's overall consideration of particulars (b) and (d) would be incomplete without at least brief focus on the allegation that Dr Ellison's notes tell a lie, that he falsified his records by adding to them that Mr Wall refused hospitalisation on at least two occasions. That is a very serious allegation which Mr Waalkens is correct in submitting the Director of Proceedings must establish to a high level of proof.

4.34 **THE** Tribunal is far from satisfied that the allegation of records falsification has been established even to the minimum level which in this jurisdiction is the balance of probabilities.

4.35 **IN** cross-examination Ms Davenport put it to Dr Ellison that in fact he did not offer Mr Wall hospitalisation on the dates noted until the family came back to see him on 17 September 1996, and that he then went back with a different pen and wrote those notes in. Dr Ellison replied *"I disagree totally"*. At this point cross-examination concluded.

4.36 **IN** his examination in chief Mr Waalkens sought from Dr Ellison explanation for the different colour biros used in the patient notes. Dr Ellison explained there was nothing sinister. He said

he usually has four or five pens on his desk. He has never worried about what colour pen he uses, except his practice is to write up results of blood tests in red biro.

4.37 **AN** examination of the original notes made by Dr Ellison for Mr Wall reveals a hotchpotch of biro colours used in making the entries. The actual references to refusal of hospitalisation seemed consistent with Dr Ellison's own style of writing patient notes. It is not possible for the Tribunal to go beyond the explanation proffered by Dr Ellison, which is accepted by us.

4.38 **IN** summary we make the following findings:

(1) The timing of Mr Wall's admission to hospital by Dr Ellison was appropriate on the facts of this case;

(2) There is no evidence to substantiate the contention that Dr Ellison refused to act upon a request by Mr Wall to be admitted to hospital on or about the week of 11 August 1996.

5. PARTICULAR (c):

Failure to appropriately annotate medical records with the quantity or the course of medication prescribed for Mr Wall.

DISCUSSION AND FINDING:

5.1 **WE** agree with Mr Waalkens it is surprising that Ms Davenport persisted with this particular of the charge in light of all the evidence, especially the almost about-face on the part of Dr King.

5.2 **IT** was Dr King's formal evidence that it is his practice to annotate in his notes dosage, the rate/day and the duration or length of prescription time.

5.3 **IN** cross-examination Dr King agreed that prescribing practices vary among doctors, and that he knew of other doctors, like Dr Ellison, who simply record the fact of having prescribed, rather than all the details. However Dr King said he did not know how common or uncommon this practice was. Dr King agreed it was a matter of ease to ascertain from pharmacists just what the prescription was if one had to, because the pharmacists were required to keep such records. As earlier indicated in this Decision, Dr King agreed with Mr Waalkens that there was, in effect, little of any substance in this particular of the charge.

5.4 **IT** remains of little formality simply to record the respective evidentiary positions of Dr Thomas and Dr Karalus concerning this particular.

5.5 **DR** Thomas considered it was a rather harsh criticism. The Tribunal accepts Dr Thomas' evidence, as far as doctors' notes are concerned, that a simple statement of the type of medication prescribed is usually sufficient. We agree this would certainly be the case with the well known antibiotics with relatively simple dose regimes, as prescribed by Dr Ellison.

5.6 **LIKEWISE** Dr Karalus said it is somewhat a moot point whether one needs to document a general practitioner's notes exactly the course and instructions of antibiotics given. We agree.

5.7 **IT** is the Tribunal's finding that Dr Ellison's failure to annotate his medical records with the quantity or the length of medication prescribed for Mr Wall constitutes neither professional misconduct nor conduct unbecoming which reflects adversely on fitness to practise medicine.

6. PREAMBLE AND PARTICULARS (a) AND (e) OF THE CHARGE:

6.1 WE agree with Ms Davenport that the preamble of the charge and particulars (a) and (e) can be encapsulated in one general heading by the Tribunal considering the totality of Dr Ellison's management of Mr Wall during the period of 20 July to 15 August 1996.

DISCUSSION AND FINDING:

6.2 SUBSTANTIALLY we rely on the evidence of Dr Thomas and Dr Karalus in finding a failure on the part of Dr Ellison to adequately diagnose and act appropriately, has not been established.

6.3 DR Ellison's initial diagnosis seemed appropriate from the information given as to the likely condition that Mr Wall was suffering from. He indicated that Mr Wall had a severe viral infection (severe flu) and that on the apparent failure of the condition to resolve on 7 August 1996, had suggested chest x-rays which were apparently delayed because the need was *"not accepted"* by the patient.

6.4 A blood test and throat swab were performed on the second visit on 7 August 1996, and the increased blood cells would back up the impression that Mr Wall was suffering from a chest infection.

6.5 THE chest x-ray performed on 13 August 1996 was reported as showing an area of increased density in the right upper lobe which may be due to pneumonic consolidation.

6.6 ON the evidence we have no criticism of the process undertaken by Dr Ellison in endeavouring to diagnose Mr Wall's condition.

6.7 **AS** to whether Dr Ellison acted appropriately, we note that on the first visit on 20 July 1996 Dr Ellison prescribed an antibiotic Augmentin and a cough medicine Pholcodeine. We agree with Dr Thomas this certainly appeared appropriate at this stage. On 7 August 1996 a further antibiotic Ceclor was used. This would also be considered to be appropriate. Dr Karalus indicated Ceclor is usually prescribed in a rather standard fashion well known to practising doctors.

6.8 **ON** 12 August 1996 when Mr Wall's condition had obviously deteriorated, an injection of Lincomycin was given and an oral antibiotic Doxycycline prescribed. We agree with Dr Thomas these were reasonably appropriate choices, although Dr Thomas agreed with Dr King that Doxycycline is usually given in a higher dose than one tablet daily for more serious infections.

6.9 **DR** Ellison's evidence indicates that he considered that Mr Wall's illness followed quite a common pattern of progression from general viral infection to specific lung infection. Clearly the situation was quite serious from 12 August 1996 and particularly after the results of the chest x-ray were known. Apparently Mr Wall was seen on 12 August 1996 and then on 15 August 1996 when he was admitted to hospital. We agree with Dr Thomas this would seem to indicate reasonable monitoring and concern by Dr Ellison.

6.10 **DR** Ellison saw Mr Wall on 7 August 1996. Dr Karalus said it would be very difficult for him to find certainly up to that point and possibly even up to 12 August 1996, any deficiency at all that could be levelled at Dr Ellison. Dr Karalus noted on that date Dr Ellison arranged a large range of blood tests, probably more than was necessary, but the result in the haematology was that Mr Wall had a high white blood count which could be compatible with a chest infection, possibly pneumonia, and mildly disturbed liver function tests which can be mildly disturbed with

infection elsewhere. We accept Dr Karalus' evidence that to this point in time Dr Ellison's care of Mr Wall was perfectly good. But even beyond this point there is nothing in the evidence of Dr Karalus which we interpret to indicate there were deficiencies in Dr Ellison's treatment and care of Mr Wall.

6.11 **DR** Karalus explained he has published research from which could be concluded there was no indication that Mr Wall had a pneumonia that was sufficiently severe that he could be considered to be at high risk of death. At the bedside Dr Karalus explained one can assess risk of death by checking blood pressure, the respiratory rate, a serum urea and whether or not the patient is confused. If there are two out of four of these reaching certain criteria, one could say the patient was at a high risk of death. Noting this is hospital based medicine, and not generally known to GP's, in Dr Karalus' opinion Mr Wall did not seem, on the presenting symptoms, to be in a high risk group at that time. Using the criteria for pneumonia on admission on 15 August 1996, Dr Karalus noted blood pressure and respiratory rate were good, and Mr Wall was not confused. Therefore Dr Karalus concluded Mr Wall satisfied only one of the four criteria, in that the serum was moderately elevated. On these grounds it was Dr Karalus' assessment that there was no particular reason for Dr Ellison to consider Mr Wall was at high risk of death on admission to hospital, even if he had been aware at the time of the hospital based criteria.

6.12 **DR** King's final concession that he would not be critical of Dr Ellison's failure to diagnose pulmonary embolism, is certainly borne out by the expert evidence of Dr Karalus.

6.13 **WITH** respect to Mr Wall, Dr Karalus saw no particular reason to consider pulmonary thrombo-embolism until the last few days of his life. Mr Wall had not had a previous deep

venous thrombus or other thrombotic episode and there was no mention anywhere of a family history of that illness. Dr Karalus thought that Mr Wall's mobility and general health between 20 July and about 12 August was not sufficiently severe to raise a high probability of a thrombo-embolism.

6.14 **DR** Karalus also pointed out that the admitting house surgeon on 15 August 1996 also did not consider thrombo-embolism.

6.15 **DR** Karalus, after studying the case notes was uncertain of the cause of death. He stated that if death was due to pulmonary embolism, that treatment was unlikely to prevent this. He suspected that Mr Wall's admission to hospital had not made any difference to the outcome.

6.16 **FINALLY**, looking at the risk factors for thrombo-embolism in Mr Wall, Dr Karalus said he would not be surprised at all if the post-mortem had shown a carcinoma of the lung as Mr Wall had been a smoker until 14 years ago, and it was the carcinoma of the lung that led to an increased thrombotic state and pulmonary embolism. Until the last few days of his life, and certainly before 7 August and probably up until 12 August, Dr Karalus said there was no reason to suspect thrombo-embolism on clinical grounds, and indeed it may not have occurred until 12 August. Unfortunately Dr Karalus noted there was no post-mortem to define the actual cause of death.

6.17 **THE** Tribunal is satisfied, and so finds, that the totality of Dr Ellison's management of Mr Wall during the period from 20 July to 15 August 1996 was adequate, and furthermore that his initial diagnosis of Mr Wall's condition was reasonable.

7. CONCLUSION:

7.1 **THE** burden of proof is on the Director of Proceedings to establish that Dr Ellison is guilty of the charge, and to produce the evidence that proves the facts on which the charge is based. It is well established in professional disciplinary cases that the civil, rather than the criminal standard of proof is required, namely proof to the satisfaction of the Tribunal, in this case the Medical Practitioners Disciplinary Tribunal on the balance of probabilities. At the same time, however, the cases recognise that the degree of satisfaction which is called for will vary according to the gravity of the allegations.

7.2 **IN** this case the Director of Proceedings has failed to establish to anything approaching the required standard of proof, particularly the allegation of falsification of records, that Dr Ellison is guilty. Accordingly the charge is dismissed.

DATED at Auckland this 11th day of June 1999

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P J Cartwright

Chair

Medical Practitioners Disciplinary Tribunal