

Medical Practitioners Disciplinary Tribunal

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DECISION NO: 59/98/21C

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 **GARRY JAMES
PROCKTER** medical
practitioner of Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mr P J Cartwright (Chair)

Ms S Cole, Dr J C Cullen, Dr J M McKenzie, Associate

Professor Dame Norma Restieaux (Members)

Ms G J Fraser (Secretary)

Ms P McKay (Stenographer)

Hearing held at Auckland on Monday 7 December 1998

APPEARANCES: Mr M F McClelland for the Complaints Assessment Committee ("the CAC")

Ms K G Davenport for Dr G J Prockter.

1. PARTICULARS OF CHARGE:

1.1 THE Complaints Assessment Committee pursuant to section 93(1)(b) of the Medical Practitioners Act 1995 charges that Dr Garry James Prockter Registered Medical Practitioner of Auckland on or about the 17th day of October 1996 was convicted by the High Court in Auckland of the following offences each being an offence punishable by imprisonment for a term of 3 months or longer.

1. Sexual violation, section 128 Crimes Act 1961 (3)
2. Attempted sexual violation, section 129 Crimes Act 1961 (4)
3. Indecent assault, section 140 Crimes Act 1961 (2)
4. Indecent assault, section 140 Crimes Act 1961 (8)
5. Indecent assault, section 140 Crimes Act 1961

and the circumstances of the offences reflect adversely on the practitioner's fitness to practise medicine.

2. BACKGROUND

2.1 **ON** or about 17 October 1996, Dr Prockter was convicted at trial, following a not guilty plea, by the High Court in Auckland on the charges listed in the Particulars of Charge in respect of five complainants under the Crimes Act 1961.

2.2 **DR** Prockter was found guilty at trial on 18 counts of sexual abuse, the charges covering a period of 18 years and involving five male complainants. He was sentenced to an effective term of nine years 3 months imprisonment (with the individual penalties served concurrently).

2.3 **DR** Prockter appealed the sentence imposed in the High Court. The appeal was heard in the Court of Appeal on 20 November 1997, with judgement being issued on 21 November 1997.

Although Dr Prockter appealed all counts of the indictment, the conviction appeal was pursued only in respect of counts 1-9 and count 18 on the indictment, which involved two complaints.

The Court of Appeal dismissed the appeal against conviction and also the appeal against sentence.

3. CIRCUMSTANCES OF THE OFFENCES

3.1 **THE** particulars of the charge laid by the CAC contain two elements. Pursuant to section 109(1)(e) of the Act the Tribunal must be satisfied that the practitioner first was convicted of an offence punishable by a term of imprisonment of three months or longer, and secondly, that the circumstances of the offence reflect adversely on the practitioner's fitness to practice medicine.

- 3.2 THE** details of Dr Prockter's convictions are set out in the copies of the High Court committal summaries filed by Mr McClelland with the Tribunal. The first element is not in issue and is accepted.
- 3.3 THE** second part of the inquiry needs to relate to the circumstances of the offending and whether it is established that they reflect adversely on the practitioner's fitness to practise medicine.
- 3.4 THE** offending against complainant A commenced when the complainant was about ten years of age and continued until he was aged 18. It included serious sexual abuse of a repetitive nature; it extended to sexual violation (involving touching A's penis with his hand and mouth) and was aggravated by the position of trust held by Dr Prockter as godfather and family friend.
- 3.5 THE** incident involving complainant B occurred in a tunnel at North Head in Auckland while Dr Prockter and two boys were walking through it in the course of a cycling trip. Complainant B was then 11 or 12 years old and was the subject of indecent conduct by Dr Prockter, involving the touching of B by Dr Prockter on the outside of his clothing in a hug context.
- 3.6 THREE** counts of indecent assault involved complainant C. Dr Prockter was also a friend of C's family. The offending occurred when the victim was aged between 5 and 7 years of age, and consisted of indecently handling the boy's penis. There were three separate incidents, one of which occurred on a camping trip.

3.7 TWO counts of indecent assault related to complainant D, then aged 10 or 11 years. The incidents again involved indecent handling of the boy's genitals and occurred on a camping trip which was being shared with three other families, including that of Dr Prockter.

3.8 COMPLAINANT E was the victim of three further offences. Dr Prockter was a friend of E's family. When he was 8 or 9 years of age, E used to visit Dr Prockter's house with his parents.

On one occasion Dr Prockter arranged a cycling trip involving his own son and E. Whilst in a tent at night, Dr Prockter fondled E and placed his finger into the boy's anus. Dr Prockter then induced the boy to masturbate him. A short time later, on the same occasion, Dr Prockter indecently handled E's penis.

4. DETERMINATION

4.1 WE are satisfied to an even higher standard than is required of us, that the circumstances of the offences for which Dr Prockter has been convicted, do reflect adversely on his fitness to practise medicine. These offences were conducted against children/young males, involved serious breaches of trust and on at least one occasion occurred in the context of Dr Prockter's medical practice.

4.2 MR McClelland explained of grave concern to the CAC is the observation by the Court of Appeal at page 7 of its judgement that:

"...the appellant (Dr Prockter) continues to deny any criminal responsibility for his actions. The consequences for the victims have been understandably severe, although the sentencing Judge was careful to record that the problems suffered by them cannot all be blamed on the appellant's abuse...Nevertheless these were serious breaches of trust, and some of the offences could properly be described as instances of serious abuse."

- 4.3 IN** Mr McClland's view the fact that Dr Prockter has refused to acknowledge his wrongdoing and that he persists in denying all offending, indicates that he has not accepted the seriousness of the situation, and lacks insight into his offending and the impact that his conduct has had on his victims.
- 4.4 ON** the other hand Ms Davenport explained that Dr Prockter accepts the abhorrence of his offences and is remorseful for them.
- 4.5 HAVING** undertaken a careful reading of the transcript of the evidence given by Dr Prockter, we are of the view that his outlook now falls somewhere in between the respective pictures painted of him by counsel.
- 4.6 IT** is fair to conclude that Dr Prockter has probably gained some insight into the gravity of his offending. He views as tragic the effect which his offending has had on his wife, who apparently is willing to continue offering him support.
- 4.7 HOWEVER** Dr Prockter seems reluctant to pursue treatment for his problems and does not wish to be admitted and treated in a unit for sexual offenders.
- 4.8 IN** the context of serious offending against children, and the breaches of trust involved by Dr Prockter, together with the nature and gravity of the offending in the community, which cannot be separated from Dr Prockter's fitness to practise medicine, the Tribunal is faced with the inevitable conclusion, which we think has been accepted by Dr Prockter, that it is necessary for

his name to be removed from the register of medical practitioners maintained under section 37 of the Medical Practitioners Act 1995. An order is made accordingly.

4.9 DR Prockter is civilly, legally aided. Although the Tribunal has the power to make an order for costs against Dr Prockter, there will be no order as to costs.

4.10 WHERE the Tribunal makes a striking off order under section 110 of the Act it may in that order exercise either or both of the following powers:

4.10.1 FIX a time after which that person may apply to have his name restored to the register;

4.10.2 IMPOSE one or more conditions that must be satisfied the practitioner before he may apply to have his name restored to the Register.

4.11 THE Tribunal wishes Dr Prockter to know that it has expressly refrained from making any of the orders permitted by section 111 of the Act.

4.12 THE Tribunal notes it will be a matter for Dr Prockter should he choose at some time in the future to seek restoration to the Register pursuant to section 33 of the Act.

DATED at Auckland this 23rd day of December 1998

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P J Cartwright

Chair

Medical Practitioners Disciplinary Tribunal