

Medical Practitioners Disciplinary Tribunal

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DECISION NO: 56/98/28C

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 **SANTOKH
SINGH** medical practitioner
of Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mr P J Cartwright (Chair)
Ms S Cole, Professor B D Evans, Dr A F N Sutherland,
Dr L F Wilson (Members)
Ms G J Fraser (Secretary)
Mrs G Rogers (Stenographer)

Hearing held at Auckland on Wednesday 9 September 1998

APPEARANCES: Ms D Hollings for the Complaints Assessment Committee ("the CAC").
Mr C W James for Dr S Singh.

SUPPLEMENTARY DECISION:

THIS supplementary decision should be read in conjunction with Decision No. 50/98/28C which issued on 2 October 1998.

In Decision No. 50/98/28C a finding was made by the Tribunal that Dr Singh's wilful omission to provide relevant medical information concerning a deceased patient, the late Mr A, constituted professional misconduct.

Decision No. 50/98/28C concluded with an invitation to counsel to make submissions as to penalty.

Those submissions having now been received and considered, the Tribunal makes the following orders pursuant to Section 110(1) of the Act:

1. ORDERS:

1.1 THAT Dr Singh be censured (Section 110(1)(d));

1.2 THAT Dr Singh be fined \$10,000.00 (Section 110(1)(e));

- 1.3** THAT Dr Singh pay \$10,621.99 which represents 50% of the costs and expenses of and incidental to the inquiry made by the Complaints Assessment Committee in relation to the subject-matter of the charge and prosecution of it, together with the hearing by the Tribunal (Section 110(1)(f));
- 1.4** THAT Dr Singh enter into the Mentoring Programme conducted by the Medical Council of New Zealand. The period of mentoring is to be not less than 18 months, and otherwise the terms and conditions of mentoring of Dr Singh are as shall be approved by the Mentoring Programme. A report to the Tribunal at six monthly intervals is requested, to ensure the Tribunal is aware of progress and that the programme is being undertaken.

At the Council's discretion a review of Dr Singh's competence may be initiated pursuant to Section 60 of the Act, in the event that a problem is highlighted during the mentoring programme.

2. REASONS FOR ORDERS:

2.1 Censure:

DR Singh has been found guilty of professional misconduct. Censure is a normal order which usually follows the making of a disciplinary finding by the Tribunal against a medical practitioner. An official expression of disapproval must be an inevitable outcome of Dr Singh's offending.

2.2 Fine and Costs:

2.2.1 **THE** maximum fine payable is \$20,000. The Tribunal agrees with Ms Hollings. The evidence established clearly that Dr Singh appeared to have deliberately included false information in regard to the letters to the Insurance Companies. A substantial fine is warranted. In this case the Tribunal considers it should impose a fine that is appropriate to the circumstances of the offending, but which is also consistent with due regard for the public interest. The fine should reflect the communities repudiation of Dr Singh's offending in the manner described in Decision No. 50/98/28C.

2.2.2 A doctor holds a position of great trust and responsibility in the community. Consequentially there should be a forthright condemnation of any conduct which serves to diminish the confidence which members of the public have in the medical profession.

2.2.3 **THE** Tribunal also considers that the fine imposed in this case should act as a deterrence to other doctors who may be minded to offend in a similar way. In imposing a fine of \$10,000 the Tribunal considers such a substantial penalty should discourage Dr Singh from offending in a similar manner in the future.

2.2.4 **FOR** the record the following costs have been incurred in this case:

Inquiry by CAC	\$3,567.81
Prosecution of Charge by CAC	\$6,460.20
The hearing by the Tribunal	\$11,215.97

2.2.5 **PURSUANT** to Section 110 of the 1995 Act the Tribunal has the power to order Dr Singh to pay part or all of the costs and expenses of and incidental to the investigation, the prosecution of the charge and the hearing by the Tribunal.

2.2.6 **THE** principles which apply to the exercise of the Medical Council's powers to make orders as to costs pursuant to the 1968 Act, are equally applicable to the Tribunal's powers under the 1995 Act.

2.2.7 **NO** submissions have been received concerning Dr Singh's ability to pay a fine and costs. In the absence of any such information the Tribunal has assumed it is within Dr Singh's financial ability to meet payment of both a fine and reasonable costs.

2.2.8 **IN** a personal submission to the Tribunal Dr Singh explained:

"Belatedly when I step aside and view my conduct overall, I conclude that I lacked insight. This case and these findings have pulled me up abruptly and it has caused me some horror to realise how I am perceived and how I have let the profession down. I am ashamed. I am sorry. I am deserving of penalty. The whole process has been a considerable ordeal to me though in many respects I can see there is benefit in that I have now gained an insight and realisation."

2.2.9 **SOME** guidance as to the appropriate levels of awards of costs in medical disciplinary proceedings can be obtained from a consideration of earlier decisions of the Courts.

In this regard the Tribunal relies on the statement of Richardson J in *Collector of Customs v Lawrence Publishing Co Ltd* [1986] 1 NZLR 404:

"Adherence to past decisions promotes certainty and stability. People need to know where they stand and what the law expects of them. So do their legal advisers. And a Court which freely reviews its earlier decisions is likely to find not only that the Court lists are jammed by litigants seeking to find a chance majority for change, but also that the respects of the law on which our system of justice largely depends is eroded."

2.2.10 **IN** *Gurusinghe v Medical Council of New Zealand* [1989] NZLR 139 the Court held that an order to pay costs amounting to approximately half of the actual expenses incurred was not excessive and noted that the ordering of payment of costs was not in the nature of the penalty but rather to enable the recovery of costs and expenses of the hearing.

2.2.11 IN this present case the Tribunal recognises Dr Singh accepts that there were serious shortcomings in his communications to the two Insurance Companies, and accepts that a censure, fine and order as to costs, are inevitable.

2.3 Conditions of Practice:

2.3.1 IN his personal submission to the Tribunal Dr Singh acknowledged:

“I agree my notes leave an awful lot to be desired. Although it will be disruptive and will further erode my self-esteem I recognise that the Tribunal may well require that a period of supervision and monitoring of my practice take place to ensure that failings identified at this hearing have been addressed with the requirement that I show on-going commitment to ensure that I have learned from this whole unfortunate saga. Accordingly I invite the imposition of a supervisory or mentoring regime which I will co-operate fully with. With regard to other penalties which this Tribunal may impose I place myself in its hands, mindful that my conduct and my approach to this case initially are not deserving of mercy. I have wronged and I must be punished. The only good that derives is that I have learned a lot and gained an insight. It is now up to me to prove this through the process of supervision to the satisfaction of the Tribunal.”

2.3.2 IN this case it is hoped that protection of society will be achieved by effecting a change in the attitudes, values and lifestyle of Dr Singh through the use of the Mentoring Programme conducted by the Medical Council. The conditions which have been imposed on Dr Singh’s right to practice will hopefully provide him with the necessary educational opportunities, specific occupational skills and moral uplift to the end and intent that such rehabilitative measures will prevent future offending by providing both the power to change and the ability to live in society as a better contributing member of the medical profession.

2.3.3 THE Tribunal is hopeful that rehabilitation will assume particular significance in Dr Singh’s case given that we have no knowledge of any prior offending by him.

2.3.4 DR Singh provided the Tribunal with some references which give us confidence that the rehabilitation function of the Mentoring Programme will be of considerable assistance to him.

DATED at Auckland this 2nd day of December 1998

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P J Cartwright

Chair

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