

Medical Practitioners Disciplinary Tribunal

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DECISION NO: 111/99/49D

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 **GRANT
DALE JACKSON** medical
practitioner of Westport

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mr T F Fookes (Chair)

Dr I D S Civil, Dr A M C McCoy, Dr J M McKenzie,

Mr G Searancke (Members)

Ms G J Fraser (Secretary)

Mrs G Rogers (Stenographer)

Hearing held at Christchurch on Monday 22 and Tuesday 23 November
1999

APPEARANCES: Mr M F McClelland for the Director of Proceedings
Mr C W James for Dr G D Jackson.

SUPPLEMENTARY DECISION:

1. THE CHARGE:

IN Decision No. 103/99/49D dated 15 December 1999, with which this Decision should be read in conjunction, the Tribunal found Dr Grant Dale Jackson, medical practitioner of Westport, guilty of conduct unbecoming a medical practitioner and that that conduct reflected adversely on the practitioner's fitness to practise medicine. This finding was made following the Tribunal's hearing of a charge, laid by the Director of Proceedings, alleging that Dr Jackson manipulated the neck of a female patient of his without obtaining her informed consent. In particular the Tribunal found that Dr Jackson:

- (i) Failed to disclose the risks of treatment that would be considered material risks by a reasonable patient in his patient's circumstances;
- (ii) Failed to provide his patient with an explanation of the options available to her, including an assessment of the risks, side effects and benefits of each option;
- (iii) Inaccurately represented to his patient the likely success of the manipulative treatment.

2. SUBMISSIONS:

2.1 IN that Decision the Tribunal requested submissions from counsel as to penalty.

2.2 IT has now received submissions from both counsel and has considered them with care. Mr McClelland, counsel for the Director of Proceedings, submitted that, subject to certain observations, the Director of Proceedings did not propose to make specific submissions in respect of penalty and left the question entirely to the discretion of the Tribunal. It was, however, submitted that any conditions imposed by the Tribunal should be designed to ensure that Dr Jackson complied in future with an absolute requirement that informed consent be obtained from a patient before carrying out treatment. It was also submitted that Dr Jackson's name, which the Tribunal had suppressed on an interim basis pending considering all the evidence in the case and arriving at its decision, should now be published. It was also submitted that what Mr McClelland called the interim order prohibiting the publication of the names or present or former addresses of the complainant and her husband should be made final. (Such order, however, was not an interim order. It was expressly stated in paragraph 6.1 of the Tribunal's Order dated 29 November 1999 that the suppression of the names of the complainant and her husband was permanent.). Mr McClelland indicated that the Director of Proceedings' costs amounted to \$23,476.52.

2.3 IN his submissions Mr James provided the Tribunal with copies of letters dated 25 January and 2 February from Dr Jackson. He also provided a memorandum from the Medical Council as to the terms of an undertaking which had been given by Dr Jackson to the Health Committee of the Council. The information also indicated that the Council has decided that Dr Jackson undertake a Competence Review which is expected to proceed within a matter of weeks from now.

2.4 **MR** James indicated that Dr Jackson had been adjudicated bankrupt in 1999. He sought permanent suppression of Dr Jackson's name and submitted that publication would severely affect Dr Jackson's rehabilitation and restoration to medical practice.

2.5 **MR** James' submissions indicated that Dr Jackson had become depressed and had required treatment. His return to work in the latter stages of 1999 had restored his self-esteem and self-worth. He had learned from the findings against him and was now cognisant of his obligations. Mr James submitted that the imposition of rigorous conditions could result in Dr Jackson's becoming unemployable. Mr James submitted that that would be an onerous and inordinate penalty accruing from a finding of conduct unbecoming.

3. PREVIOUS OFFENDING:

3.1 **MR** McClelland's submissions informed the Tribunal that the Medical Practitioners Disciplinary Committee had previously found Dr Jackson guilty of conduct unbecoming a medical practitioner. The background to that finding was that Dr Jackson had manipulated a patient's neck without her consent. The finding related to a consultation which took place late in January 1996.

3.2. **DR** Jackson was ordered by the Disciplinary Committee to pay \$2,500 towards the costs of the inquiry.

3.3 **IN** his submissions Mr James indicated that that determination of the Disciplinary Committee post-dated the 17 November 1996 consultation which formed the basis of the charge brought against Dr Jackson by the Director of Proceedings.

3.4 **WE** accept that but it is nevertheless a matter for considerable concern that the decision of this Tribunal represents the second finding against Dr Jackson of manipulating a patient's neck without obtaining her informed consent.

4. IMPORTANCE OF OBTAINING INFORMED CONSENT:

4.1 **BOTH** the Medical Council and this Tribunal regard a doctor's obtaining the patient's informed consent before embarking on treatment as a cornerstone of the practice of medicine.

A failure to obtain such consent will generally be regarded as a serious matter.

4.2 **IN** this particular case there were aspects of the evidence (see paragraphs 8.28 and 8.29 of the Tribunal's Decision dated 15 December 1999) which persuaded the Tribunal not to make a finding of professional misconduct against Dr Jackson. Instead he was found guilty of conduct unbecoming a medical practitioner and which reflects adversely on his fitness to practise medicine.

4.3 **SUCH** findings should indicate to Dr Jackson that although the finding was one of conduct unbecoming the matter is still serious because it involves an unacceptable discharge of a practitioner's professional obligations and an assessment by the Tribunal that the conduct in question reflects adversely on his fitness to practise. The fact that the Tribunal's findings represent the second occasion on which Dr Jackson has, in the same context, been found guilty by a medical disciplinary body of conduct unbecoming a medical practitioner is a matter to which the Tribunal has regard in determining the penalty which should now be imposed on Dr Jackson.

5. THE PUBLIC INTEREST:

5.1 **IN** determining penalty this Tribunal takes into account both the public interest and the interests of the practitioner. It has regard to the requirements of public health and safety. This is consistent with s. 3 of the Medical Practitioners Act 1995 (“the Act”) which provides that the principal purpose of the Act is to protect the health and safety of members of the public by prescribing or providing for mechanisms to ensure that medical practitioners are competent to practise medicine. The Act seeks to attain that purpose by (among other things) providing for the disciplining of medical practitioners.

5.2 **IN** the decision at which it has arrived the Tribunal has sought to be constructive and also to impose a penalty which is designed to protect the health and safety of members of the public.

6. PENALTIES:

6.1 **THE** Tribunal has no power to order Dr Jackson’s name to be removed from the Register. This is because he has not been found guilty of disgraceful conduct in a professional respect or of an offence against paragraph (e) or paragraph (f) of s. 109(1) of the Act.

6.2 **THE** Tribunal has the power to suspend Dr Jackson for a period not exceeding 12 months but has decided not to exercise that power.

6.3 **THE** Tribunal has decided that Dr Jackson should be censured and ordered to pay a fine of \$2,500.

6.4 **THE** Tribunal has also decided to order that for a period of two years from the date of this Decision Dr Jackson may practise medicine only in accordance with the following conditions:

- (a) He is to continue to observe and comply with all of the terms of the voluntary undertaking already given by him to the Health Committee of the Medical Council of New Zealand.
- (b) He is to undergo a Competence Review by the Medical Council of New Zealand or its appointee(s).
- (c) He is not, except in cases of extreme emergency (all of which he is to report to his mentor), to carry out any medical treatment without first obtaining his patient's informed consent to the treatment proposed.
- (d) He may not, except with the prior written permission of the Medical Council, practise medicine as a self-employed person.
- (e) He may work only for such other practitioner or practitioners and in such place or places as have from time to time been approved in writing by the Medical Council.

6.5 **IT** should be noted that the outcome of the Competence Review is a matter for the Medical Council. What steps, if any, the Council takes in light of the outcome of that review are a matter for it and not for this Tribunal. This decision is not intended to limit in any way the action (if any) which the Council takes in consequence of that review.

7. PUBLICATION:

7.1 **THE** Tribunal has carefully considered the competing submissions on this point. It granted interim suppression of Dr Jackson's name because of certain material put before it in relation to significant health problems from which he has suffered.

- 7.2** **THE** issue is whether that interim suppression should now be made permanent or should be lifted.
- 7.3** **THIS** issue involves balancing Dr Jackson's personal interests (for example the fact that his ability to practise has been and continues to be beneficial in assisting his recovery from his health problems and that publication of his name might have an effect upon his employability and thus his practice) with the interests of the public.
- 7.4** **THE** Tribunal accepts the submission of counsel for the Director of Proceedings that publication of Dr Jackson's name is appropriate. Dr Jackson has twice now been found guilty by medical disciplinary bodies of manipulating the neck of a patient without first obtaining that patient's informed consent. In the Tribunal's view the community in which he practises has a right to know that so that its members can make an informed choice as to whether they wish to consult him about particular conditions.
- 7.5** **THE** Tribunal strongly considers that it would be failing in its duty if it allowed sympathy for Dr Jackson and the undoubtedly significant health problems from which he has suffered to outweigh its duty to do what it can to ensure that members of the public in the area in which he practises are aware, in the interests of their own health and safety, of the findings which have now been made against him by two medical disciplinary bodies.
- 7.6** **IN** arriving at this conclusion the Tribunal notes that the finding by the Disciplinary Committee has already been the subject of newspaper publicity. It considers that the public interest requires it to order publication of Dr Jackson's name in connection with the current finding.

8. COSTS:

8.1 THE Tribunal notes that Dr Jackson was declared bankrupt last year. It does not know whether he has since been discharged.

8.2 THE Tribunal takes the fact of his bankruptcy into account. It also has regard to the fact that two of the five particulars of the charge against him were dismissed. It notes Mr James' submission that Dr Jackson is likely to be responsible for any costs awarded against him and that arrangements will have to be entered into in respect of the method of payment of the costs. It accepts that such arrangements will be required.

8.3 IN all the circumstances the Tribunal orders Dr Jackson to pay 35% of the costs and expenses of and incidental to the prosecution of the charge by the Director of Proceedings and the hearing by the Tribunal.

9. ORDERS:

9.1 AFTER conducting a hearing on a charge brought against him by the Director of Proceedings the Tribunal is satisfied that Dr Grant Dale Jackson of Westport has been guilty of conduct unbecoming a medical practitioner and that that conduct reflects adversely on his fitness to practise medicine and hereby orders:

9.1.1 that he be censured;

9.1.2 that he pay a fine of \$2,500;

9.1.3 that he may, for a period not exceeding two years, practise medicine only in accordance with the following conditions:

- (a) He is to observe and comply with all of the terms of the voluntary undertaking already given by him to the Health Committee of the Medical Council of New Zealand.
- (b) He is to undergo a Competence Review by the Medical Council of New Zealand or its appointee(s).
- (c) He is not, except in a case of extreme emergency where the patient's medical condition makes it impossible for him to obtain it (all of which cases he is to report to his mentor), to carry out any medical treatment without first obtaining his patient's informed consent to the treatment proposed.
- (d) He may not, except with the prior written permission of the Medical Council of New Zealand, practise medicine as a self-employed person.
- (e) He may work only for such other practitioner or practitioners and in such place or places as have from time to time been approved in writing by the Medical Council of New Zealand;

9.1.4 that he pays 35% of the costs and expenses of and incidental to the prosecution of the charge by the Director of Proceedings and the hearing by the Tribunal;

9.1.5 that in relation to Dr Jackson the Secretary of the Tribunal shall cause a notice under s. 138(2) of the Act to be published in the New Zealand Medical Journal;

9.1.6 (for the avoidance of doubt) that the Tribunal's previous Order (dated 29 November 1999) that the publication of the names or present or former address of the complainant A and her husband B be prohibited is hereby made final;

9.1.7 that the Tribunal's previous order (dated 29 November 1999) that publication of the name or any details which might lead to the identification of the respondent medical

practitioner was prohibited until the further order of the Tribunal now lapses and no order for permanent suppression of Dr Jackson's name is made;

9.1.8 that neither this Decision, nor any of these Orders, are to be published beyond the Tribunal, the parties or their counsel in a form which contains any reference to the name of the complainant or the complainant's husband.

DATED at Wellington this 28th day of February 2000

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T F Fookes

Senior Deputy Chair

Medical Practitioners Disciplinary Tribunal