

Medical Practitioners Disciplinary Tribunal

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DECISION NO: 109/99/51C

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 **BRENT
STEPHEN SAVAGE**
medical practitioner of
Christchurch

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL:

Mr T F Fookes (Chair)

Professor W Gillett, Associate Professor Dame Norma Restieaux, Dr B

J Trenwith, Mrs H White (Members)

Ms G J Fraser (Secretary)

Mrs G Rogers (Stenographer)

Hearing held at Christchurch on Thursday 10 February 2000

APPEARANCES: Mr C J Lange for a Complaints Assessment Committee ("the CAC")
Mr C J Hodson QC for Dr B S Savage.

1. THE CHARGE:

1.1 A Complaints Assessment Committee established under Section 88 of the Medical Practitioners Act 1995 referred to the Tribunal the following charge against Dr Brent Stephen Savage:

“The Complaints Assessment Committee pursuant to section 93(1)(b) of the Medical Practitioners Act 1995 charges that Dr Brent Stephen Savage, Registered Medical Practitioner was convicted by the District Court at Christchurch of the following offences as set out in the attached informations each being an offence punishable by imprisonment for a term of 3 months or longer;

1. On or about the 20th day of October 1997 did commit an offence against Section 229(A)(b) Crimes Act 1961.
2. On or about the 10th day of November 1997 did commit an offence against Section 229(A)(b) Crimes Act 1961.
3. On or about the 17th day of November 1997 did commit an offence against Section 229(A)(b) Crimes Act 1961.
4. On or about the 30th day of November 1997 did commit an offence against Section 229(A)(b) Crimes Act 1961.

5. On or about the 5th day of December 1997 did commit an offence against Section 229(A)(b) Crimes Act 1961.

6. On or about the 12th day of December 1997 did commit an offence against Section 229(A)(b) Crimes Act 1961

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

2. **THE** maximum punishment for an offence against s. 229(A)(b) is seven years' imprisonment. The charge was admitted. The Tribunal, after conducting its hearing on the charge, is satisfied that Dr Savage has been convicted by a New Zealand Court of offences punishable by imprisonment for a term of three months or longer and, having considered this issue, that the circumstances of those offences reflect adversely on his fitness to practise medicine.

3. **THE PENALTY PROVISION:**

3.1 **SECTION** 110(1), (2) and (3) of the Medical Practitioners Act 1995 provide as follows:

“110. Penalties—

(1) In any case to which section 109 of this Act applies, the Tribunal may,—

- (a) Subject to subsection (2) of this section, order that the name of the medical practitioner be removed from the register or any part of the register:*
- (b) Order that the registration of the medical practitioner be suspended for a period not exceeding 12 months:*
- (c) Order that the medical practitioner may, for a period not exceeding 3 years, practise medicine only in accordance with such conditions as to employment, supervision, or otherwise as are specified in the order:*
- (d) Order that the medical practitioner be censured:*
- (e) Subject to subsections (3) and (4) of this section, order that the medical practitioner pay a fine not exceeding \$20,000:*

- (f) *Order that the medical practitioner pay part or all of the costs and expenses of and incidental to any or all of the following:*
- (i) *Any investigation made by the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994 in relation to the subject-matter of the charge:*
 - (ii) *Any inquiry made by a complaints assessment committee in relation to the subject-matter of the charge:*
 - (iii) *The prosecution of the charge by the Director of Proceedings or complaints assessment committee, as the case may be:*
 - (iv) *The hearing by the Tribunal.*
- (2) *The Tribunal shall not make an order under subsection (1) (a) of this section ordering that the name of a medical practitioner be removed from the register or any part of the register, unless the Tribunal has found the medical practitioner—*
- (a) *Guilty of disgraceful conduct in a professional respect; or*
 - (b) *Guilty of a disciplinary offence against paragraph (e) or paragraph (f) of section 109 (1) of this Act.*
- (3) *Where the Tribunal is dealing with any matter that constitutes an offence for which the medical practitioner has been convicted by a court, the Tribunal shall not impose a fine under subsection (1) (e) of this section.”*

4. CIRCUMSTANCES SURROUNDING THE OFFENCES:

- 4.1** **THE** six charges brought against Dr Savage in the District Court at Christchurch in 1998 were admitted by him. The agreed bundle of documents which was put before the Tribunal included the Summary of Facts which was read to the Court after Dr Savage’s plea of guilty and the transcript of the remarks of the sentencing Judge.
- 4.2** **THE** charges related to the claiming by Dr Savage of General Medical Service subsidies from Health Benefits Limited in respect of patient consultations. Health Benefits Limited’s function was to administer the disbursement of Health Authority Funds to health professionals including general practitioners. Health Authority Funding related to subsidised services provided by general practitioners to all citizens who became eligible for

such services. The main subsidy available to general practitioners was for what is termed a “*General Medical Service*” (GMS). The GMS subsidies were paid to a health professional following the submission of claims on an approved form. Claims were submitted by general practitioners in batches, usually on a weekly basis.

4.3 **THE** terms and conditions under which claims were paid were negotiated between the general practitioner and the Health Funding Authority under the provisions of an Advice Notice pursuant to Section 51 of the Health and Disability Services Act 1993. Such a notice stipulated that the general practitioner may only claim a service that was both proper and necessary and that the service must be provided by the general practitioner to that patient in person.

4.4 **FOLLOWING** the receipt of information from a general practitioner then employed by Dr Savage and from an adult patient Health Benefits Limited conducted a formal investigation audit at Dr Savage’s then premises in January 1998. Analysis of the practice records, together with consultation slips and claims submitted to Health Benefits Limited by Dr Savage, resulted in a substantial number of patients being interviewed. Investigations showed that in 17 instances, involving a total of six GMS Schedules bearing dates between 20 October and 12 December 1997, Dr Savage had been paid subsidies in respect of claims he submitted where no service was provided by him to the patients claimed. These occasions involved fraudulent claiming in relation to family members who happened to accompany those who actually required a consultation with Dr Savage or claiming in circumstances where either no consultation with Dr Savage took place or the only

consultation was with the Practice Nurse. The subsidies in question amounted to a total of \$457.50.

4.5 **THE** claims were generated by Dr Savage adding names to the consultation slips for regular patients or to patient information sheets used in respect of casual patients. From there such names would be entered onto GMS Claim Schedules by reception staff. Dr Savage then signed the claim summary form certification which was submitted to Health Benefits Limited on a weekly basis with the Claims Schedules attached.

5. REMARKS OF SENTENCING JUDGE:

5.1 **THE** Judge's remarks on sentence do not determine what penalties are imposed by this Tribunal but they may nevertheless provide some guidance in obtaining an appreciation of the gravity of the practitioner's offending.

5.2 **SELECTED** extracts which the Tribunal considers have some relevance to the proceedings before it follow:

"It is apparent that over many years you have suffered from two particular difficulties which have affected your life. The first difficulty is a history of depressive illness. The second is an alcohol abuse problem. As is clear from the undated letter to Mr Hodson from Dr Crawford, those difficulties have run in tandem.

I am also prepared to accept that your fraudulent claims resulted from financial pressures, which in turn arose from investment decisions which had gone sour.

It is of course axiomatic or self-evident that offending of this nature by a general practitioner in public practice will have consequences beyond the prosecution itself, and in particular in respect of the practitioner's ability to continue in practice. It is not for me to comment on the appropriate action which might be taken against you by the Medical Council, because that is a matter for that body.

However, in sentencing you for these offences I must nevertheless emphasise that the community is entitled to expect that general practitioners will be honest in their dealings with the health authorities. The GMS system itself depends significantly on the honesty and integrity of general practitioners who submit claims for GMS benefits. In a sense the GMS system is therefore very much self-regulating or self-regulatory, and the community is entitled to expect that the privilege which general practitioners enjoy in respect of their ability to claim GMS benefits will not be abused. On the 17 occasions which are the subject of the current charges you therefore abused that privilege.

The present offending is offending involving dishonesty, in respect of which the presumption against imprisonment in Section 6 of the Criminal Justice Act applies. The courts have made it clear on several occasions that sustained offending of this nature, involving repetitive breaches of trust by a general practitioner, will generally result in a sentence of imprisonment.

However, in my view the public interest does not demand that you be sentenced to imprisonment for these offences, serious though they were in the context of your position. You have no previous convictions, and convictions themselves will therefore be a significant sentence or penalty, and in that context I have already also referred to the inevitable disciplinary proceedings before the Medical Council.

Taking all factors into account, in my view the appropriate total penalty for these offences is a fine of \$3,000.

On each of the six charges you are now fined \$500. On the first charge you are ordered to pay court costs of \$130 and a contribution towards the costs of prosecution of \$500, which I emphasise is a purely nominal order."

6. THE TRIBUNAL'S HEARING:

- 6.1 AFTER** Mr Lange for the CAC had made some opening remarks Mr Hodson also opened his case. In the course of his remarks he noted that Dr Savage had been on a downward course in terms of his health, stemming from problems of depression and alcoholism, throughout the 1990's and the convictions with which the Tribunal was dealing were the nadir of Dr Savage's career. He also noted that during 1999 the state of Dr Savage's health had come to the notice of the Medical Council. Dr Savage had appeared before its Health Committee and as a result of that appearance had given an undertaking to the Health Committee, a copy of which was produced to the Tribunal.

6.2 DR Savage gave evidence and was cross-examined by Mr Lange. Correspondence from three Christchurch practitioners which had been put before the Health Committee in the second half of 1999 was produced to the Tribunal. A letter from Dr Robert Crawford, whom Dr Savage had undertaken to the Health Committee he would continue to see in a therapeutic relationship, prepared earlier this month was also produced and has been carefully considered by the Tribunal.

6.3 EVIDENCE was also called from Mr McLeod, a Director of “*The Deanery Care & Respite Centre*”, a detoxification and education facility for alcoholics. This commenced operation on 1 December 1999. Dr Savage has been the doctor for this facility. Mr McLeod considered that Dr Savage is now in total recovery. He said it would be a great loss to the Deanery if Dr Savage were not permitted to carry on his work. He said it was well recognised that the only person who can help a sick alcoholic is a recovering alcoholic.

6.4 EVIDENCE was also called from Mrs Home, Practice Nurse at the Eastgate Medical Centre where Dr Savage is currently employed for 30 hours per week. She gave evidence concerning the procedures instigated at that centre to deal with:

- (a) the event that a family member accompanying a patient requests a consultation;
- (b) a non-regular patient or visitor coming to the practice.

Dr Savage conceded in cross-examination that, even with the steps which have been put in place, there still remains the opportunity for false claims to be made. He said that those steps do make it much more difficult.

6.5 AS part of the undertaking given by Dr Savage to the Health Committee he gave permission for Mrs Home to communicate with the Health Committee and with Dr Crawford if she observed any sign that could indicate an exacerbation of Dr Savage's alcoholism or a recurrence of his depression. She confirmed that since the undertaking was given she had not had any cause to contact the Committee or Dr Crawford.

6.6 SOME aspects of particular importance in the evidence of some of the witnesses will be dealt with later in this Decision.

7. PREVIOUS OFFENDING:

7.1 IN October 1991 Dr Savage admitted two charges of professional misconduct brought against him by the Preliminary Proceedings Committee of the Medical Council of New Zealand. These charges alleged prescribing in an indiscriminate manner drugs of dependency. In its Decision the Medical Practitioners Disciplinary Committee said (inter alia):

“These actions fall into the category of serious professional misconduct at the higher end of the scale. The indiscriminate prescribing in respect of both patients of drugs of dependency display a total disregard for the responsible and careful practice of medicine. In fixing penalties the Committee took into account that Dr Savage pleaded guilty and of Dr Savage's acknowledgement of contrition. However, the very serious nature of his transgressions are such that the penalties the Committee is bound to impose must reflect the Committee's grave disapproval of Dr Savage's actions and act as a deterrent to others.”

7.2 ON each charge Dr Savage was ordered to pay a penalty of \$800 and was censured. A condition was “for the protection of the public and in the interests of Dr Savage” imposed on his practice for a period of two years from the date of the Committee's order. Dr Savage was directed to pay \$16,500 by way of costs of and incidental to the expenses of

the inquiry. A notice stating the effect of the Committee's order was ordered to be published in the New Zealand Medical Journal.

7.3 **THOSE** charges related to events between 1985 and 1988.

7.4 **IN** or about 1993 the Preliminary Proceedings Committee of the Medical Council charged Dr Savage with professional misconduct. It alleged that he permitted, aided and abetted his practice nurse to conduct herself in a such a way as to create the impression that she was a medical practitioner and that he permitted her to examine patients at his rooms, to write prescriptions for patients on pre-signed prescription forms and to give the impression by her words and demeanour that she was a doctor. The Medical Practitioners Disciplinary Committee upheld the charge, censured Dr Savage and ordered him to pay a penalty of \$500 and 50% of the costs of the inquiry amounting to \$7,940.

7.5 **IN** 1996 the Medical Practitioners Disciplinary Committee found proved against Dr Savage a charge that the claiming of fees from the ARCIC by Dr Savage to which he was not entitled in the period May 1991 to October 1992 amounted to professional misconduct.

7.6 **IN** the course of its decision the Committee said:

“That improper claiming arose out of his professional behaviour as a doctor and represented a serious dereliction of his duty to the ARCIC. The Committee find the proven conduct to be very seriously below that required of a general practitioner and without any doubt whatsoever it amounts to professional misconduct.”

- 7.7** **THE** Committee ordered that Dr Savage be censured, pay a penalty of \$900 and pay the sum of \$63,548.29 (inclusive of GST) being the costs of and incidental to the inquiry. It also directed that a notice be published in the Medical Journal stating the effect of its order.
- 7.8** **DR** Savage appealed to the Medical Council against the Committee's findings and particularly objected to a part of the finding which said that while in respect of named patients the erroneous claim quantum may have been only in the region of \$1,400 the evidence satisfied the Committee that this was merely a sample of a generalised practice which resulted in Dr Savage exceeding the average payments made to general practitioners twelve-fold.
- 7.9** **THE** Medical Council concluded that the evidence did not justify the Disciplinary Committee's statement. Having considered the whole matter afresh, however, the Council said that it was in no doubt that the extent and nature of the erroneous claiming over a significant period of time, as established by the evidence in relation to the consultations analysed, constituted professional misconduct at a high level in their own right. It said that it considered that even with the matter of extrapolation set aside the degree of misconduct was at a high level. It said that the Committee was also entitled to consider an earlier finding of professional misconduct in other matters in setting the penalty. It noted the *“extensive adverse comments made by the Committee in regard to the credibility of Dr Savage's evidence throughout Clause 2 of its findings”*. The Council was not persuaded that there were proper grounds to alter the amount of the fine. It quashed the Committee's order as to costs and ordered Dr Savage to pay 55% of the costs of and incidental to the inquiry. This required him to pay \$31,068.05.

7.10 IT was thus the position following the Medical Council’s decision (dated 8 April 1997) that Dr Savage had, by bodies with medical disciplinary powers, been censured four times (there were two separate censures in the 1991 decision) and ordered to pay penalties totalling \$3,000 and costs exceeding \$50,000.

7.11 A little over six months after the Medical Council’s decision Dr Savage commenced to commit the criminal offences of which he was later convicted and which have resulted in his now appearing before the Tribunal.

8. JUDICIAL PRONOUNCEMENTS:

8.1 MR Lange in his submissions drew the Tribunal’s attention to two relevant judicial pronouncements concerning the importance of high standards being observed by medical practitioners making claims for payment:

(a) In *In re Mudie* [1957] NZLR 689, 693 McCarthy J said:

“Every medical practitioner must surely know the reliance which is placed by the department on the signature of a medical practitioner in these matters. The Department places great trust in the integrity and reliability of the profession and the Medical Council is, in my view, entitled to view as a matter of grave impropriety any real departure from those standards of conduct which are called for by reason of that trust. Just as the Law Society takes, and must take, a serious view of any improper or negligent practices by solicitors in relation to the trust funds of their clients, so it seems to me the Medical Council owes a duty to its profession and to the public to see that the highest standards are observed by its members in relation to lodging of claims against the Social Security Fund.”

(b) In *Ongley v Medical Council of NZ* (1984) 4 NZAR 369, 376 Jeffries J said:

“Where that certificate is to be used as the prime document for the payment of money, as it was in this case, then correspondingly the medical certifier must ensure the document is scrupulously correct and does not contain misleading statements.”

9. PREVIOUS TRIBUNAL DECISIONS:

9.1 **THE** Tribunal's attention was drawn to five previous decisions of medical disciplinary bodies in relation to medical practitioners who had appeared before those bodies as a result of convictions entered against them on account of false claims. In three of those cases the practitioners concerned had been sentenced by the Court to a term of imprisonment and the names of those practitioners were subsequently ordered to be removed from the Register. In all three cases the period of criminal offending was longer than the period involved in Dr Savage's case. In two of those cases it appears that no time was fixed after which the practitioner could apply to have his name restored to the Register. In the third case a period of three years was fixed. In the other two cases the practitioners were punished in ways which did not involve the removal of their names from the Register.

9.2 **THERE** is no hard and fast rule as to what penalty the Tribunal will impose in such cases. Every case must be and is judged on its own facts and these may and do differ materially from case to case. For example in the case of Dr Yau (one of those whose name was not removed) it was submitted by his counsel that he had not previously engaged in any dishonesty or professional misconduct and was unlikely to re-offend. In the present case, in contrast, the Tribunal is dealing with a practitioner who, apart from his criminal convictions, has three times been found guilty of professional misconduct and punished for it.

9.3 **WHILE** we obviously accept that consistency in approach is desirable this general observation must be tempered by the reality that the facts of individual cases involving improper claims being made by medical practitioners vary so greatly.

10. SUBMISSIONS FOR THE CAC:

MR Lange submitted that in determining the appropriateness of penalties to be imposed regard could be had to the following.

Breach of Trust:

10.1 **MEDICAL** practitioners are people of high standing in the community and it is expected of them that they will be honest in their dealing with Funding Authorities. The latter should be entitled to rely on the certificates that claims are in all cases proper and that medical practitioners act honestly in formulating and lodging those claims.

10.2 **THIS** is the second occasion Dr Savage has appeared before the professional disciplinary body in relation to benefit claims and his fourth appearance on disciplinary matters.

Nature of Offence:

10.3 **DR** Savage was convicted of offences of using a document with intent to defraud which in this context meant he had acted deliberately with the knowledge that he was acting in breach of his legal obligation and without an honest belief that he was so entitled to act.

Effect of Fraud:

- 10.4** **IN** determining appropriate penalties to be imposed the Tribunal may have regard to the effect of fraud not only in the specific sense but also in the wider general sense. The victim in cases of GMS fraud is in effect the public health system. The GMS system is funded by the taxpayer and there is a constant and competing demand on the taxpayers' money as well as on the administration of those funds. Here the offending was not of an isolated nature but was repeated on a number of occasions.

Detection of Offending:

- 10.5** **IMPROPER** GMS claiming by doctors can be committed with relative ease however is difficult to detect and requires substantial resources to investigate. In the case of Dr Savage the offending came to light following a doctor employed at the surgery referring his concerns to Health Benefits Limited (rather than as a result of voluntary disclosure by Dr Savage).

Specific Submission:

- 10.6** **THE** Tribunal should make an order removing Dr Savage's name from the Register having regard to the aggravating features of the case.
- 10.7** **MR** Lange also submitted that honesty and integrity was expected from doctors not only in GMS claiming but also before Tribunals such as this Tribunal. He submitted that there had been a lack of that in relation to the Disciplinary Committee's decision in 1991 (which decision was not referred to by Dr Savage in his evidence in chief or cross-examination

and was brought to the Tribunal's attention only when Dr Savage was re-examined by Mr Hodson).

11. SUBMISSIONS FOR THE RESPONDENT:

11.1 IN his first remarks to the Tribunal concerning this case Mr Hodson said that the essential decision for the Tribunal was whether or not to strike Dr Savage off and, if not, what to do for the future. In his final address his principal submissions were that:

- (1) The public interest in the detection and punishment of offenders is the province of the police and the Criminal Court. The primary public interest and the major issue of punishment of the person concerned has been attended to (in this case) by the Court.
- (2) There has been a very constructive tradition of the Medical Council and this Tribunal in endeavouring wherever possible to take a constructive and forward looking approach to the problems posed by practitioners who have fallen from grace.
- (3) There appears to be a rule of thumb that in New Zealand a doctor who goes to jail for fraud suffers removal of name from the Register and a doctor whose liberty is left to him by the judgement of the Court is allowed by the Tribunal to practise with or without conditions depending upon the appropriate case.
- (4) Dr Savage deserved censure.
- (5) Suspension was not an alternative which should occupy the Tribunal to any great extent in this case.
- (6) He urged with all the power that he could that the Tribunal not remove Dr Savage's name from the Register. Very great weight should be given to the request from Dr Crawford who made a plea that Dr Savage be allowed to retain his practising

certificate with suitable monitoring in place. He also noted that if Dr Savage were to be struck off his income would be gone, he would be a patient at the Deanery, he would have about half his time cast upon his hands, that every alcoholic is at risk of relapse and that the risk of a relapse would be enormously increased by striking Dr Savage off. Such a course would also have effects on Dr Savage's partner and children.

- (7) In view of the history of previous offending and the relatively recent recovery, there should, if Dr Savage was permitted to continue to practise, be controls but the concept of loading a practitioner down with many conditions was one to be resisted almost at all costs because the history of conditions on practice is strewn with problems where what has seemed like a good idea at the time later turned out to be unworkable.
- (8) The alternative of removal of name from the Register was "*too awful to contemplate*". The relevance of Dr Savage's history of depression and alcoholism is that it created the atmosphere in which his moral outlook was able to and did become corrupted and the offending which the Tribunal had heard about provided the very depressing but all too familiar picture of the slide downwards until finally the person concerned hit the rock bottom of criminal conviction in the Courts. At that point Dr Savage had picked himself up and Mr Hodson asked that the Tribunal allow him to continue to do so.
- (9) Dr Savage sought a last chance.

11.2 **IN** reply Mr Lange referred to the question of public interest and in that regard to s.3 of the Medical Practitioners Act 1995 indicating that the principal purpose of the Act is to protect the health and safety of members of the public.

In connection with Mr Hodson's suggested rule of thumb that doctors who are imprisoned are also struck off and those who are not imprisoned are not struck off, Mr Lange submitted that the Court is not advised or informed of matters which have involved the professional disciplinary body. When Dr Savage appeared before the Court he was treated as a first offender and the Court was unaware of the three previous appearances before medical disciplinary bodies. The Tribunal in contrast was aware of those previous occurrences and had to take them into account.

11.3 **THE** Tribunal is indebted to both counsel for their submissions and has considered them with care.

12. PERSONAL CIRCUMSTANCES:

12.1 **DR** Savage graduated in 1977. His evidence was that he had by the later 1980's and early 1990's come under increasing stress, principal factors being long working hours, unrecognised alcoholism, failure of his marriage and severe financial pressures. In 1995 he sold his first practice and set up an (essentially) after-hours practice in the central city. In 1996 a substantial rest home project in which he had been the principal developer collapsed. He then set up another practice in which he was engaged at the time of his criminal offending. That practice too involved stresses including financial pressures and High Court litigation.

- 12.2** **FOLLOWING** his convictions his health had deteriorated to the stage that he was required by the Medical Council to appear before its Health Committee. He had given the Health Committee a voluntary undertaking to comply with conditions required by the Health Committee. He considered himself to be clinically competent.
- 12.3** **HE** is now employed by Eastgate Medical Ltd as a part-time general practitioner at a salary of \$1,500 for 30 hours per week. While he has a section 51 notice (see para. 4.3 above) he has no direct involvement with the finances of the practice. There are procedures in place which are designed to avoid any possibility of erroneous claiming.
- 12.4** **THE** Deanery (see para. 6.3 above) has a capacity of eight resident patients. Dr Savage and his partner live nearby. He provides oversight for all the patients on a voluntary basis. He prescribes for them and issues nursing orders and instructions to two registered nurses.
- 12.5** **HE** believes that for the first time he has overcome his addiction. His work at the Centre is a major feature of his keeping well. The Centre is providing a real service in a very difficult and much sought after area. He said that he understands that it is the Tribunal's responsibility to protect the public interest and the good name and standing of the profession. He accepted that his actions had regrettably disgraced his professional standing and that of the medical profession. For that he apologised. He said that his ability to practise medicine had been a very real factor in his not succumbing to alcohol intake during working hours. This was still the case and he asked the Tribunal to preserve this privilege. He said that his work at the Deanery caring for others afflicted with the disease of alcoholism was the most rewarding and health-preserving work that he had ever done.

Without doubt, he said, this new direction was the cornerstone of his recovery and he asked the Tribunal that it may continue.

13. ROLE OF TRIBUNAL:

13.1 IT is not the role of the Tribunal to punish Dr Savage for his breach of the criminal law.

That is the prerogative of the Court and it has discharged its duty.

13.2 **THE** role of the Tribunal is to consider whether, in view of the convictions and any other relevant circumstances, any of the penalties set out in s. 110 of the Medical Practitioners Act 1995, and if so which, should be imposed upon the practitioner.

13.3 **IN** discharging that role the Tribunal will have regard not only to the public interest but also to the interests of the practitioner concerned. The public and private interests which are involved may well conflict with each other. The Tribunal must consider the conflicting interests and arrive at the decision which it considers appropriate in all the circumstances of the case.

14. THE CONFLICTING INTERESTS:

14.1 IT has often been said that medical practitioners are people of high standing in the community. It is expected of them that they will be honest in their dealings with Funding Authorities. Those Authorities place trust in the integrity and reliability of members of the medical profession and the Tribunal is entitled to and does view as a matter of grave impropriety any significant departures from the standards of conduct which are called for by reason of that trust. Medical practitioners who claim that a service was both proper

and necessary and was provided to the patient in person, when such was not the case, not only breach trust and disgrace themselves and their profession but commit an act which is difficult to detect without the use of considerable resources. The victim in such cases is the public health system and by defrauding that system a doctor in effect defrauds not only the State but also those who are entitled to the benefit of the payments.

14.2 IN this case there were 17 fictitious claims spread across six different claim forms and a period of approximately two months. The offending cannot be regarded as being of an isolated nature and would in any circumstances be regarded as extremely serious.

14.3 APART from the criminal offending there are other aggravating features of the case. We detail them:

- (a) After the Medical Council's decision in April 1997, which represented the third finding against him of professional misconduct, Dr Savage ought - by any standards - to have appreciated the need for his professional conduct to be impeccable from then on.
- (b) Within only six months of that decision, however, Dr Savage commenced to commit the criminal offences which resulted in the convictions which have brought him before this Tribunal.
- (c) While those convictions are his only convictions it is nevertheless the case that they do not represent the first occasion on which improper claiming of fees has occurred. That was the basis of the findings made against him by the Disciplinary Committee in 1996.

- (d) The present case represents Dr Savage's fourth appearance before medical disciplinary bodies in a little over eight years. On all three previous occasions findings adverse to him were made and he was punished. He appears not to have learned any lesson from his previous appearances. On the contrary he has since those appearances resorted to serious criminal acts.
- (e) Those acts occurred at the very time when, as noted in sub-paragraph (a) above, Dr Savage should have been concentrating on ensuring that his professional conduct was beyond reproach.
- (f) The criminal offending represents the culmination of a record of professional misbehaviour which we can only describe as deplorable.

14.4 **THE** Tribunal has carefully balanced against its view of the seriousness of the conduct which gave rise to Dr Savage's convictions his personal circumstances as outlined to the Tribunal. It has had particular regard to the very helpful letter from Dr Crawford. The Tribunal has no doubt that Dr Savage's ability to work has assisted him as a recovering alcoholic and that termination of his right to practise would expose him to the risk of relapse. It is also in no doubt that he is providing valuable services to patients at the Deanery. It is concerned for their interests but notes that another medical practitioner could provide the services in question and that even if Dr Savage's right to practise were terminated it would still be open to him to associate with patients at the Deanery though not to practise medicine. It appreciates that financial hardship too would be likely to flow from his being unable to practise.

- 14.5 THE** Tribunal accepts that (as Dr Crawford reports) there has been a heartening change in Dr Savage's attitude to his disease and notes his willingness to assist others with similar problems. It must, however, be acknowledged that these are relatively recent developments, that there were unfortunate incidents in the second half of 1999 and that it is too early to be able to say with certainty that the part which Dr Savage's problems with depression and alcohol played in his offending is now definitely behind him.
- 14.6 THE** procedures to which we referred in para. 6.4 above are noted and have been considered but are not considered to be foolproof and even the fact that it has been considered necessary to devise and implement them is telling.
- 14.7 HAVING** carefully considered all of Mr Hodson's submissions, which we found to be extremely helpful, and all of the evidence called, having had particular regard to Dr Crawford's plea that Dr Savage be allowed to retain his practising certificate, and recognising fully the risks and dangers to Dr Savage to which termination of his right to practise would expose him, the Tribunal nevertheless unanimously considers that when this doctor, who had already had made against him three findings of professional misconduct, within six months of the Medical Council's decision engaged in conduct which breached the criminal law he effectively forfeited his right to practise. The Tribunal also unanimously considers that the public interest plainly requires that Dr Savage's name be removed from the Register. In the Tribunal's view Dr Savage's personal interests, which might well be best served by his being permitted to continue to practise, must in all the circumstances take second place to the public interest which in our view clearly requires that he not at this

stage be permitted to continue to practise and the interests of the profession (which require that the highest standards are observed at all times).

15. REHABILITATION:

15.1 THE Order for removal of name will be made with reluctance. Mr Hodson's point that this Tribunal has endeavoured to be constructive in its approach towards erring practitioners is well made. The Tribunal, while acting in a manner which is intended to protect the public interest and the interests of the profession, notes that in July 1999 Dr Savage was regarded, by three practitioners familiar with his work, as competent. His work at The Deanery is valuable to the community. It is therefore in his interests and those of the community that regard should be had to his potential rehabilitation.

15.2 AS the Tribunal has already noted there has been a recent heartening change in his attitude. It will be open to him, despite the Tribunal's decision, to continue on the path of recovery from his problems. To do so he will need to maintain the therapeutic relationships which are already in place and undergo such treatment as is recommended to him. The Tribunal has decided that in the circumstances of this case, and with an eye to the possibility of rehabilitation, it is appropriate for it to fix a time after which Dr Savage may apply to have his name restored to the Register. The time which it is proposed to fix is 12 months from the date of the Tribunal's hearing.

15.3 THE fixing of that time does not in any way guarantee that Dr Savage's name will be restored to the Register on an application made after that time. The Tribunal can give no guarantee of that first because the decision as to restoration of name is made by the

Council and not by the Tribunal and secondly because it will be a matter for the Council to decide what information it requires to be provided by Dr Savage in support of any application which he then makes and whether that information satisfies it that restoration of name is warranted.

15.4 **THE** decision which the Tribunal has arrived at is designed to make it clear to Dr Savage that while, in the Tribunal's view, he has forfeited the right to practise and the public interest and the interests of the profession require his name to be removed, the decision does not necessarily represent the end of his career as a medical practitioner. Within one year from the date of hearing he will be able to apply to the Council for restoration of his name and, if the Council is satisfied by material put before it that that course of action would be appropriate, his career might then resume.

16. COSTS:

16.1 **DR** Savage is earning \$1,500 per week but the Tribunal was told that he has no financial resources to fall back on if he is struck off. We take account of that and the fact that he admitted the charge and elected to concede that the circumstances of his offences reflect adversely on his fitness to practise medicine. In the circumstances some reduction of what might otherwise have been ordered to be paid by way of costs is warranted. He should also be allowed a reasonable period within which to pay the costs which the Tribunal orders and any arrangement which is necessary or desirable in that regard should be sympathetically considered.

17. CONCLUSION:

17.1 **THE** Tribunal has carefully considered its decision. It looked at all of the penalty options which were available to it. It did not consider that censure would be an adequate penalty.

For a variety of reasons a suspension and/or an order for practice subject to conditions did not appear to the Tribunal to be appropriate in the circumstances of the case. With reluctance, but nevertheless with a clear view, the Tribunal considered that Dr Savage's name should be removed from the Register but that a relatively short period of 12 months should be fixed as the time after which he can apply to have his name restored to the Register. By its decision the Tribunal intends both to protect the public interest and the interests of the profession and to approach the question of Dr Savage's possible rehabilitation in a constructive way.

18. ORDERS:

18.1 **AFTER** conducting a hearing on the charge laid under the Medical Practitioners Act 1995 against Dr Brent Stephen Savage of Christchurch, medical practitioner, the Tribunal is satisfied that the practitioner has been convicted by a Court in New Zealand of offences punishable by imprisonment for a term of three months or longer and that the circumstances of those offences reflect adversely on his fitness to practise medicine and hereby orders:

18.1.1 **PURSUANT** to s. 110(1)(a) of the Medical Practitioners Act 1995 ("the Act") that the name of Dr Brent Stephen Savage of Christchurch be removed from the Register.

18.1.2 **PURSUANT** to s. 110(1)(f) of the Act that Dr Savage pay 35% 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, the prosecution of the charge by the Complaints Assessment Committee and the hearing by the Tribunal.

18.1.3 **PURSUANT** to s. 111(1)(a) of the Act that 10 February 2001 be fixed as the time after which Dr Savage may apply to have his name restored to the Register.

18.1.4 **THAT** the Secretary of the Tribunal cause a notice pursuant to s. 138(2) of the Act to be published in the New Zealand Medical Journal.

18.1.5 (To allow time for Dr Savage to notify Eastgate Medical Limited and The Deanery of his inability to continue to practise and for them to make any alternative arrangements which seem necessary or desirable) **PURSUANT** to s. 112(2) of the Act that the removal of Dr Savage's name from the Register is to take effect at 5 pm on that date which is seven days after and exclusive of the date of this Decision.

DATED at Wellington this 28th day of February 2000

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T F Fookes

Senior Deputy Chair

Medical Practitioners Disciplinary Tribunal