



## **MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL**

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**DECISION NO:** 236/03/103C

**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  
**VUKILE ZAUKA** medical  
practitioner of Auckland

### **BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL**

**TRIBUNAL:** Dr D B Collins QC (Chair)  
Mr P Budden, Dr I D S Civil, Dr B D King, Dr L Henneveld  
(Members)  
Ms G J Fraser (Secretary)  
Mrs G Rogers (Stenographer)

Hearing held at Wellington on Thursday 17 July 2003

**APPEARANCES:** Ms K P McDonald QC for the Complaints Assessment Committee  
("the CAC")

Ms J Gibson and Ms I Egerton for Dr Zauka

### **Introduction**

1. Dr Zauka is a registered medical practitioner who now lives and works in Auckland. On 28 March 2003 a Complaints Assessment Committee laid a charge with the Tribunal alleging Dr Zauka had been convicted of an offence punishable by imprisonment for a term of three months or longer, and that the circumstances of the conviction reflect adversely on Dr Zauka's fitness to practise medicine<sup>1</sup>. The particulars of the charge are explained in the next paragraph of this decision. The hearing of the charge took place in Wellington on 17 July 2003. At the conclusion of the hearing the Tribunal retired to consider its decision. Later on 17 July the Tribunal advised the parties that the charge would be dismissed. The Tribunal now explains its reasons for dismissing the charge against Dr Zauka.

### **The Charge**

2. The charge is based on the acknowledged fact that on 16 April 2002 Dr Zauka was convicted in the District Court at Porirua of driving a motor vehicle under the influence of drink or drug in circumstances where he was incapable of having proper control of that vehicle. The offence occurred on 7 January 2002 at Paekakariki. The offence constituted a breach of s.58(1) Land Transport Act 1998.
3. Sections 58 (1) and (2) of the Land Transport Act 1998 provide:

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<sup>1</sup> Section 109(1)(e) Medical Practitioners Act 1995 ("the Act"), refer para 5 of this decision.

*“(1) A person commits an offence if the person drives or attempts to drive a motor vehicle on a road while under the influence of drink or drug, or both, to such an extent as to be incapable of having proper control of the vehicle.*

*(2) If a person is convicted of a first or second offence against subsection (1), -*

*(a) the maximum penalty is imprisonment for a term not exceeding three months or a fine not exceeding \$4,500; and*

*(b) the Court must order the person to be disqualified from holding or obtaining a driver’s licence for six months or more.”*

4. When Dr Zauka appeared in the District Court he pleaded guilty. He was convicted, fined \$600 and disqualified from holding or obtaining a motor vehicle driver’s licence for six months.

5. Dr Zauka accepted that his conviction in the Porirua District Court on 17 April 2002 satisfied the first limb of s.109(1)(e) of the Act. That section confers jurisdiction on the Tribunal where a medical practitioner:

*“Has been convicted by any Court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of three months or longer, and the circumstances of that offence reflect adversely on the practitioner’s fitness to practise medicine. “*

6. The issue before the Tribunal was whether “the circumstances of [Dr Zauka’s] offence reflect adversely on [his] fitness to practise medicine”.

### **Circumstances of the offence**

7. In examining the circumstances of the offence the Tribunal has carefully examined the incident that led to Dr Zauka being charged, and the circumstances which existed in his life during the time which immediately preceded the offence.

7 January 2002

8. The incident which led to Dr Zauka being apprehended by the Police on the evening of 7 January 2002 was a dangerous and erratic piece of driving. It is very fortunate no-one was injured or killed by Dr Zauka's conduct.
9. The Tribunal received and accepted the Police summary of facts presented in the District Court. That summary states:

*"About 10.15pm on Monday 7 January 2002 [Dr Zauka] was driving his Toyota motor vehicle south on State Highway 1, Paekakariki.*

*Just north of MacKay's crossing on State Highway 1 [Dr Zauka] completely stopped in the centre of the southbound lane for no reason, he ... remained stationery for a short time and then [drove] off.*

*He ... repeated the stopping manoeuvre two more times within the next three kilometres. Over this distance the defendant was driving irrationally(sic) on the roadway, weaving from side to side and also crossing the double yellow lines in the north bound lane.*

*Just north of Paekakariki Railway Station, [Dr Zauka] ... pulled across the north bound lane on a blind corner where he ... stopped his vehicle in a dangerous position and hopped out.*

*Members of the public [who] had witnessed [Dr Zauka's] driving also stopped and removed the keys from the ignition to prevent him from driving off.*

*When Police arrived and spoke to [Dr Zauka] he was seated in the rear seat of his vehicle. He smelt of alcohol but was unable to communicate and simply [grunted] in response to questions asked of him. A passive breath test indicated the presence of alcohol with a "fail" result. [Dr Zauka] had to be assisted out of his vehicle and supported to prevent him from falling over. He was taken into custody and transported back to the Paraparaumu Police Station.*

*Due to [his] being so unresponsive and unable to stand or sit in a chair without balance assistance, a police doctor was called to examine [Dr Zauka]. He was subsequently taken by ambulance to Wellington Hospital due to his heavily sedated state.*

...

*[Dr Zauka] has not previously appeared before the Court”*

10. Although the Tribunal has found the disciplinary charge not proven, the Tribunal believes Dr Zauka’s behaviour on 7 January was reprehensible.

Dr Zauka’s circumstances

11. In assessing the events in Dr Zauka’s life which preceded his offending, the Tribunal has been greatly assisted by a report prepared for the Medical Council of New Zealand by Dr Flewett a registered psychiatrist who examined Dr Zauka on 16 January 2002.
12. Dr Zauka was born in Lusikisiki, South Africa, on 27 April 1957. He obtained his medical qualifications from Mendusa University of South Africa in 1986 and held a number of medical positions in Port Elizabeth and Durban before starting private practice in 1995. Dr Zauka is married. He has 6 children. His wife and children are still living in South Africa. Dr Zauka told the Tribunal that his wife and children plan to join him in New Zealand later this year.
13. Dr Zauka was recruited by an employment agency to come to New Zealand. He arrived in this country on 5 November 2001. Dr Zauka understood he was to work in Auckland. Last minute changes resulted in his being placed with the Kapiti Accident and Medical Centre in Paraparaumu. Due to administrative oversights Dr Zauka was not able to commence practising (as a temporary registrant) until 21 November 2001.
14. The arrangements at the Kapiti Accident and Medical Centre were in a state of flux when Dr Zauka arrived. It was a practice specialising in accident as well as general medicine work. The practice was meant to have two full time doctors covering from 8am to 10pm. The Tribunal heard from Dr Krivan who worked at the Kapiti Accident and Medical Centre before he left to set up his own practice on 1 December 2001. Dr Krivan described the administration of the Kapiti Accident and Medical Centre as “haphazard”. The Centre was poorly managed and eventually changed its management in mid 2002.
15. At the time Dr Zauka started work Dr Krivan was his “supervisor”. Dr Krivan was not aware of his new responsibility until “the last minute”. He had never supervised a doctor

before and despite his best intentions and efforts he readily acknowledged that his supervision did not accord with the Medical Council's comprehensive 'Guidelines for Supervision and Induction of Temporary Registrants'. There was meant to be another medical practitioner (Dr Matalavea) at the centre but he was away on leave. The centre was employing a number of locums to cover for the absent doctors. When Dr Krivan set up his practice on 1 December Dr Zauka was dependant on a locum for immediate assistance. Dr Matalavea returned to the practice approximately three weeks after Dr Zauka had started. Dr Matalavea did not remain at the practice for very long and his replacement was another South African with temporary registration.

16. Dr Zauka was required to work extensive hours. He worked 6 days a week including statutory holidays. At this time he was living in a motel unit.
17. Although Dr Zauka had daily contact with his wife and children he was clearly very lonely and struggled to adjust to his new circumstances.
18. Dr Zauka is a practising Anglican. His faith is important to him. He greatly missed having the support of his church while he was working at Paraparaumu.
19. Dr Zauka explains his circumstances at this time in the following way:

*"... I was becoming increasingly stressed. I had left behind my wife and 6 children (the youngest of whom was 3); and I had been active with the Anglican church in South Africa but found that there was not the same degree of support on the Kapiti Coast: I had no induction into New Zealand medical practice and patient expectations and no significant [support from] other practitioners. I had expected to come to Auckland and work in a large centre with readily available support but that had been changed without my knowledge. I was finding adapting to these circumstances very difficult. There were no support systems in place. The working environment became more stressful for me. I worked very long hours including Christmas Day and New Years Day in an environment which I was not familiar with. I found this, and being away from my family at these times very stressful".*

20. Dr Zauka's difficulties were further compounded when he developed a viral infection in early January 2002. He developed severe stomach cramps and had a nurse at the practice

administer buscopan injections (20mg). These were administered once a day for the three day period preceding Dr Zauka's arrest. In addition to the buscopan injections Dr Zauka self medicated buscopan tablets. He had also self medicated valium tablets to assist with a bad dental abscess approximately two weeks before the driving offence. Dr Zauka accepts it was wrong for him to self medicate these medicines. He says that he took valium over three nights and that he only took one 5mg tablet each night.

21. On the evening of 7 January Dr Zauka went to a restaurant by himself. He drank wine with his meal. He now thinks he may have drunk about two glasses of wine. His evidence on this point was not consistent with explanations he gave others after the incident, or his state of intoxication on the night of 7 January 2001. The Tribunal is confident Dr Zauka drank more than two glasses of wine but it cannot now determine exactly how much Dr Zauka consumed. Dr Zauka recalls leaving the restaurant in his car. Thereafter he has no recollection of what occurred until he woke up in hospital.

#### **Assessments of Dr Zauka**

22. On 8 January Dr Krivan spoke to Dr Zauka and raised concerns about Dr Zauka's standard of practice since arriving in New Zealand. Dr Krivan then contacted the Medical Council which in turn arranged for Dr Flewett to assess Dr Zauka. Prior to his being assessed by Dr Flewett, Dr Zauka saw his general practitioner (Dr Gunaseelan) for treatment of his stomach and stress related conditions. Dr Gunaseelan told the Tribunal about the blood and urinary tests he arranged. Those tests did not reveal any previous or ongoing drug or alcohol abuse.
23. Dr Flewett conducted a very thorough assessment of Dr Zauka. Dr Flewett's conclusion is summarised in the following way:

*"From my interview with Dr Zauka and my discussions with the other doctors, I do not feel that Dr Zauka suffers from psychiatric disability and there does not seem to be a history of substance abuse or substance dependency. Dr Zauka is however experiencing high levels of stress at the present time and his insight and judgment has been compromised by his isolation, long hours of work, possibly by lack of supervision, lack of support from his religion and by substantial cultural changes. I suspect*

*that it will be relatively straight forward to implement some supports for Dr Zauka, which will reduce his stress substantially.”*

24. Dr Flewett’s optimism proved to be well founded. Dr Zauka continued working for Kapiti Accident and Medical Centre (through its change of management) until September 2002 when he commenced working for White Cross in Auckland.
25. The Medical Council required Dr Zauka be assessed by two of its statutory committees, namely the “Health Committee” which examines whether or not medical grounds exist which affect a doctor’s fitness to practise, and the “Competence Committee”. As its name suggests, the latter committee’s role is to assess a doctor’s competence and put in place remedial programmes to upskill doctors whose competence is unsatisfactory.

Dr Flewett’s report satisfied the Health Committee that there were no medical grounds affecting Dr Zauka’s fitness to practise medicine. The Competence Committee found shortcomings and put in place a remedial programme which Dr Zauka has now completed.

He is currently awaiting the final report of the Competence Committee. Part of the remedial programme put in place by the Competence Committee included supervision, from Dr Koefed who also works for White Cross in Auckland. The Tribunal received Dr Koefed’s report on Dr Zauka dated 15 May 2003. That report was very encouraging and described Dr Zauka as having worked “very hard to upskill himself”. According to Dr Koefed Dr Zauka “has sound clinical knowledge, skills and attitude. He is always willing to learn and is aware of his limitations and when to ask for help”. In all respects covered by the report, Dr Zauka received a grading of either 4 or 5. The highest grading under that scale is 5 - being “excellent”.

26. The Tribunal received a considerable amount of information about the reports prepared for the Medical Council’s “Competence Committee”. The CAC drew the Tribunal’s attention to issues associated with the Competence Committee’s functions. The Tribunal has put those matters to one side because the Tribunal’s task is to focus on the circumstances of the offence of 7 January 2002 and whether those circumstances reflect adversely on Dr Zauka’s fitness to practise medicine. That task should not be confused with the Competence Committee’s role.



## Legal Principles

27. The Tribunal received and considered detailed submissions on the principles it should follow when assessing whether the circumstances of an offence reflect adversely on a doctor's fitness to practise medicine.

### Relevance of a Practitioner's current circumstances

28. In *W v The Complaints Assessment Committee*<sup>2</sup> the District Court heard an appeal from a doctor charged under s.109(1)(e) of the Act. Dr W was charged with very serious criminal offences after he threatened his wife and her new partner with a shotgun. He pleaded guilty and was sentenced to 21 months imprisonment. That sentence was reduced on appeal to 15 months imprisonment. Dr W attributed his behaviour to the pressures and stresses he was experiencing.
29. In the appeal to the District Court from the Tribunal's decision placing conditions on the doctor's ability to practise an issue arose as to when circumstances must exist which reflect adversely on a doctor's fitness to practise medicine for the purposes of s.109(1)(e) of the Act. The issue was explained in the following way in the judgment:

*“Mr Hodson submitted to the Tribunal, and it appears to have been accepted by it, that the time at which any adverse reflection is to be considered is the time of the hearing, not the time at which the offences were committed”.*

30. The District Court Judge agreed with that proposition and said: *“That would appear to fit the plain words of the section.”* The issue on appeal was whether the Tribunal had adhered to the principles which it had articulated.
31. In *W v The Complaints Assessment Committee* the Tribunal, and District Court found that Dr W's offending was attributable to his inability to manage stress. The Tribunal and District Court believed that at the time of the Disciplinary Hearing there were still valid

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<sup>2</sup> Unreported, District Court Wellington, CMA 182/98, Thompson DCJ, 5 May 1999

concerns about Dr W's ability to manage stress, hence the Tribunal and District Court put in place conditions on Dr W's ability to practice medicine.

32. The Tribunal heard submissions on the implications of *W v Complaints Assessment Committee* from both counsel in the present case. Ms McDonald QC in her helpful submissions urged the Tribunal to focus on the events of 7 January 2002. In her submissions, Dr Zauka's present circumstances did not determine whether or not "the circumstances of [the offence] reflect adversely on [Dr Zauka's] fitness to practise medicine". Ms Gibson's equally helpful submissions emphasised the Tribunal needed to have some regard to Dr Zauka's present circumstances in determining whether or not the circumstances of the offence reflect adversely on his fitness to practise medicine.
33. The Tribunal has determined the issue in this case by a two step process. The Tribunal has focussed upon the circumstances of the offence and then determined whether those circumstances reveal matters which reflect adversely on Dr Zauka's fitness to practise medicine. In determining whether circumstances of the offence reflect adversely on Dr Zauka's fitness to practise the Tribunal has been assisted by the medical evidence gathered soon after the offence which established two critical facts, namely, the circumstances of the offence did not reveal:
  - 33.1 Any psychiatric impairment which could reflect adversely on Dr Zauka's fitness to practise medicine; and
  - 33.2 Any previous or ongoing alcohol or drug abuse difficulties which could reflect adversely on Dr Zauka's fitness to practise medicine.
34. The Tribunal has also placed weight on Dr Flewett's assessment that systems could quickly be put in place to alleviate the stress Dr Zauka was suffering from at the time of the offence. The assistance Dr Zauka received from his general practitioner, and the supportive environment he now works in has greatly relieved the stress Dr Zauka previously suffered from. It is also apparent Dr Zauka has now overcome many of the difficulties he encountered when he first tried to adjust to living and working in New Zealand.

The Scope of the Rider in s.109(3) of the Act

35. The Tribunal has also been guided by the observations of the District Court in *Complaints Assessment Committee v Mantell*<sup>3</sup> in which the Court said the following in the context of a charge under s.109(1)(c), which also contains the rider that the conduct in question must reflect adversely on the practitioner's fitness to practise medicine:

*"In order to satisfy the requirements of the rider, it is not necessary that the proven conduct should conclusively demonstrate that the practitioner is unfit to practise. The conduct will need to be of a kind that is inconsistent with what might be expected from a practitioner who acts in compliance with the standards normally observed by those who are fit to practise medicine. But not every divergence from recognised standards will reflect adversely on a practitioner's fitness to practise. It is a matter of degree. What conduct will satisfy the requirements of the rider cannot be decided solely by analysing the words of this subsection. It is, rather, a matter that calls for the exercise of judgment ..."*

Standard of Proof

36. The requisite standard of proof in medical disciplinary cases was considered by Jeffries J in *Ongley v Medical Council of New Zealand*<sup>4</sup> where the High Court adopted the following passage from the judgment in *Re Evatt: ex parte New South Wales Bar Association*<sup>5</sup>

*"The onus of proof is upon the Association but is according to the civil onus. Hence proof in these proceedings of misconduct has only to be made upon a balance of probabilities; Reifek v McElroy.<sup>6</sup> Reference in the authorities to the clarity of the proof required where so serious a matter as the misconduct (as here alleged) of a member of the Bar is to be found, is an acknowledgement that the degree of satisfaction for which the civil standard of proof calls may vary according to the gravity of the fact to be proved".*

37. The same observations were made by a full bench of the High Court in *Gurusinghe v Medical Council of New Zealand*<sup>7</sup> where it was emphasized that the civil standard of

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<sup>3</sup> Unreported, District Court, Auckland, NP 4533/98, Doogue DCJ, 7 May 1999

<sup>4</sup> (1984) 4 NZAR 369

<sup>5</sup> (1967) 1 NSWLR 609

<sup>6</sup> [1966] ALR 270

<sup>7</sup> [1989] 1 NZLR 139 at 163

proof must be tempered “having regard to the gravity of the allegations”. This point was also made by Greig J in *M v Medical Council of New Zealand (No.2)*<sup>8</sup>:

*“The onus and standard of proof is upon the[respondent] but on the basis of a balance of probabilities, not the criminal standard, but measured by and reflecting the seriousness of the charge”.*

In *Cullen v The Medical Council of New Zealand*<sup>9</sup> Blanchard J adopted the directions given by the Legal Assessor of the Medical Practitioners Disciplinary Committee on the standard required in medical disciplinary fora.

*“The MPDC’s legal assessor, Mr Gendall correctly described it in the directions which he gave the Committee:*

*‘[The] standard of proof is the balance of probabilities. As I have told you on many occasions, ... where there is a serious charge of professional misconduct you have got to be sure. The degree of certainty or sureness in your mind is higher according to the seriousness of the charge, and I would venture to suggest it is not simply a case of finding a fact to be more probable than not, you have got to be sure in your own mind, satisfied that the evidence establishes the facts’.*

38. In this case the charge and allegations levelled against Dr Zauka are less serious than many heard by the Tribunal. The Tribunal has determined the charge by applying the civil standard of proof without tempering that standard in any way.

### Consistency

39. The Tribunal believes that, as a matter of principle, doctors in the position of Dr Zauka should be treated in a similar manner to other professionals who are convicted of a single incident of driving under the influence of drugs or alcohol.
40. The Tribunal was advised that during the past two years the Medical Council has had 20 convictions of doctors in New Zealand referred to it. Of those 20 convictions, 13 concerned doctors found guilty of breaching the “drink driving” provisions of the Land Transport Act 1998. Dr Zauka is the only doctor who has been referred to the Tribunal

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<sup>8</sup> Unreported HC Wellington M 239/87 11 October 1990

<sup>9</sup> Unreported HC Auckland 68/95, 20 March 1996

following a single conviction under the “drink drive” provisions of the Land Transport Act 1998. Furthermore, the Tribunal is not aware of any professional in New Zealand being charged in a disciplinary forum following a single “drink driving” conviction without any other convictions. The following cases illustrate the degree of offending that has triggered disciplinary proceedings following “drink driving” convictions.

41. In *Re Hughes*<sup>10</sup> the Law Practitioners Disciplinary Tribunal considered three charges brought against a former Wellington solicitor. One of those charges was brought pursuant to s.112(1)(d) Law Practitioners Act 1982 which is similar to the charge brought against Dr Zauka in that it alleged the practitioner had been convicted of an offence punishable by imprisonment and the conviction reflected on Mr Hughes fitness to practise as a barrister and solicitor. Mr Hughes appeared before his profession’s disciplinary tribunal following three separate convictions in the Wellington District Court as a result of incidents on the 22<sup>nd</sup> February, 5 April, and 31 May 2002 when his alcohol levels were 1,634 micrograms per litre of breath, 334 milligrams per 100 millilitres of blood and 410 milligrams per 100 millilitres of blood. To compound matters Mr Hughes had four previous convictions for driving with excess breath or blood alcohol. Mr Hughes was sentenced to 6 months imprisonment. The Law Practitioners Disciplinary Tribunal had no hesitation in concluding Mr Hughes had serious problems with alcoholism and that his judgment was so impaired that he was not fit to practise law. The Law Practitioners Disciplinary Tribunal’s decision was undoubtedly influenced by Mr Hughes serial offending which clearly highlighted his continuing lack of fitness to be a member of the legal profession.

Mr Hughes circumstances are markedly removed from those of Dr Zauka.

42. *Re Leishman*<sup>11</sup> is another decision of the New Zealand Law Practitioners Disciplinary Tribunal. There a former Wellington law practitioner was convicted in the District Court of Western Australia on two charges, namely dangerous use of a motor vehicle causing death and driving with excess blood alcohol. He was sentenced to 2 years imprisonment on the dangerous driving charge and fined AUD\$500 on the charge of driving with excess blood

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<sup>10</sup> New Zealand Law Practitioners Disciplinary Tribunal, 28 April 2003

<sup>11</sup> New Zealand Law Practitioners Disciplinary Tribunal, 2 April 2003

alcohol. In striking Mr Leishman's name from the role of barristers and solicitors in this country the Law Practitioners Disciplinary Tribunal examined a number of factors in that case which reflected adversely on Mr Leishman's fitness to practise. Those factors included:

- “- driving under the influence of alcohol is regarded with increasing gravity and diminishing tolerance.*
- driving under the influence and causing death connotes a significant element of moral turpitude.*
- incurring a term of imprisonment by way of criminal sanction directly reflects the gravity of the criminal offending.”*

Again, clear and compelling distinctions can be drawn between Dr Zauka's circumstances and those which concerned the Law Practitioners Disciplinary Tribunal in Leishman's case.

43. In *Re v J Jossling*<sup>12</sup> is a decision of the Pharmacy Disciplinary Tribunal. That case concerned a charge of conduct unbecoming brought against a pharmacist following his conviction in the Kaitia District Court on four charges of resisting constables, one charge of assaulting a constable, one charge of failing to stop, one charge of failing to remain stopped and one charge of driving a motor vehicle with excess blood alcohol. The combined effect of those eight convictions in the circumstances of that case led the Pharmacy Disciplinary Tribunal to conclude Mr Jossling's conduct was not consistent with the standards expected of a member of the pharmacy profession. Mr Jossling was suspended from practise for six months. Mr Jossling's behaviour, particularly in relation to his assaulting police officers and resisting arrest were significantly different from Dr Zauka's single offence.
44. The Tribunal had its attention drawn to an earlier decision of the Tribunal in *Re K*<sup>13</sup>. In that case a doctor convicted of an offence under s.56(1) Land Transport Act 1998 was charged under s.93(1)(b) of the Medical Practitioners Act 1995. In addition to the “drink

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<sup>12</sup> Pharmaceutical Society of New Zealand, 25 August 1999

<sup>13</sup> 140/0063C, 29 November 2000

driving” conviction Dr K had been convicted of two offences under the Misuse of Drugs Act 1975 for administering morphine to himself. He also stole drug prescription forms from another medical practitioner and forged those forms to acquire controlled prescription drugs. Again, there is a vast gulf between the case of Dr K and the circumstances of the case before the Tribunal.

**Reasons why circumstances do not reflect adversely on Dr Zauka’s fitness to practise**

45. The Tribunal reiterates its grave concern about Dr Zauka’s gross lack of judgment on the night of 7 January 2002.
46. The Tribunal’s decision to dismiss the charge is influenced by the following factors:
  - 46.1 The conviction in the District Court at Porirua on 16 April 2002 is the only conviction Dr Zauka has incurred in New Zealand or elsewhere.
  - 46.2 The punishment imposed by the District Court comprised a modest fine and the minimum period of disqualification from driving. The District Court did not regard the offending as a serious case of breaching the “drink drive” provisions of the Land Transport Act 1998.
  - 46.3 The offending occurred when Dr Zauka was “off duty” and did not impact on his discharge of his professional responsibilities.
  - 46.4 The medical evidence acquired soon after the offence revealed the offence was not part of a previous or ongoing pattern of alcohol or drug abuse. The Tribunal accepts Dr Zauka had not consumed alcohol on a frequent basis before the incident and it also accepts he has not drunk alcohol since 7 January 2002. The Tribunal also accepts Dr Zauka has not self prescribed any medication since early January 2002.
  - 46.5 A factor which played a significant role in generating the stress which Dr Zauka suffered from prior to 7 January 2002 was the inadequate support and help he had when he started working in New Zealand. These observations should not be

construed as a criticism of Dr Krivan who did all that he could to help. The reality is those responsible for the administration of the Kapiti Accident and Medical Centre at the time of Dr Zauka's employment failed to put in place appropriate methods for his induction and to guide him in his new place of work.

That factor, more than any other contributed to Dr Zauka's failure to cope with the pressures associated with his relocation in New Zealand. As a consequence of his failure to cope with that stress Dr Zauka resorted to abusing alcohol on one occasion.

46.6 Dr Flewett's report suggested that it would be a relatively easy task to put in place measures to alleviate the stress Dr Zauka suffered from on 7 January 2001.

The evidence before the Tribunal confirmed Dr Flewett's assessment of Dr Zauka's circumstances at the time of the offence was well founded because Dr Zauka no longer suffers from the stress which affected him at the time of the offence.

47. Before concluding its decision the Tribunal wishes to place on record that Dr Zauka also made a grave error in judgment in prescribing buscopan and valium for himself. The Tribunal accepts he now appreciates his error. Those lapses in judgment are not relevant to the circumstances of his conviction.

## **Conclusion**

48. The Tribunal was not persuaded the circumstances of Dr Zauka's conviction reflect adversely on his fitness to practise medicine, accordingly the charge was dismissed by the Tribunal on 17 July 2003.

49. The Tribunal directs the Secretary of the Tribunal to publish a summary of the Tribunal's findings in the Medical Journal of New Zealand. This order is made pursuant to s.138(2) of the Act.



**DATED** at Wellington this 4<sup>th</sup> day of August 2003.

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D B Collins QC

Chair

Medical Practitioners Disciplinary Tribunal