



## MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

PO Box 24463, Manners Street, Wellington • New Zealand  
13th Floor, Mid City Tower • 139-143 Willis Street, Wellington  
Telephone (04) 802 4830 • Fax (04) 802 4831  
E-mail [mpdt@mpdt.org.nz](mailto:mpdt@mpdt.org.nz)  
Website [www.mpdt.org.nz](http://www.mpdt.org.nz)

**DECISION NO:** 233/00/61C/01/84C  
**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  
**BERIS FORD** medical practitioner  
of Whangarei

### BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

**TRIBUNAL:** Mrs W N Brandon (Chair)  
Mrs J Courtney, Dr J C Cullen, Dr A R G Humphrey,  
Dr U Manukulasuriya (Members)  
Mr B A Corkill (Legal Assessor)  
Ms K L Davies (Hearing Officer)  
Mrs G Rogers (Stenographer)

Hearing held at Whangarei on Monday 4 to Friday 8 and Monday 11 to  
Friday 15 March 2002

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

Mr A J Knowsley for Dr B Ford.

## **ADDENDUM TO DECISION**

### **Introduction**

1. In a decision on appeal from this Tribunal's Decision dated 10 June 2002, the Appellate Court has asked the Tribunal to clarify its findings of fact in relation to a charge of professional misconduct laid against the appellant, Dr Beris Ford, a general practitioner based in Whangarei.
2. The relevant charge was one of several charges laid against Dr Ford, all of which were the subject-matter of a hearing in Whangarei in March 2002. In its Decision the Tribunal determined that, while the Particulars of the charge laid against Dr Ford in relation to Ms W, were established (para 120 of its Decision), the Tribunal was not satisfied that Dr Ford was guilty of any professional disciplinary offence.

### **Decision**

3. In referring the matter back to this Tribunal for clarification, the appellate judge has identified two possible interpretations of "*what the Tribunal meant in para 120*". The Tribunal has re-convened as requested and humbly advises the Court that the first of the two interpretations offered (in para 43 thereof), is correct.

## Reasons

4. The Tribunal is satisfied that:
  - (a) Dr Ford did examine Ms W's breasts when she consulted him for a prescription for the contraceptive pill;
  - (b) Ms W was a credible witness;
  - (c) Dr Ford did make the inappropriate comment complained of by Ms W.
  
5. However, in the context of that consultation and on the basis of the evidence given by the expert witnesses, the Tribunal was not satisfied that its findings of fact warranted the sanction of an adverse finding on the charge itself.
  
6. On the basis of the evidence as to what constituted 'best practice' in the circumstances of this consultation, it was not open to the Tribunal to find, as a matter of fact, that the breast examination was "*unnecessary*". That is, unlike the examinations involving Ms R and Ms D, the breast examination carried out in Ms W's consultation was not merely "*opportunistic*".
  
7. As to whether the examination was "*inappropriate*", the Tribunal was left only with Ms W's impression that it was. While satisfied that was the impression Ms W retained, the Tribunal was not satisfied, to the requisite standard of proof, that the examination was conducted in a way that fell so far short of acceptable standards that it constituted a professional disciplinary offence.
  
8. Finally, and in relation to the comment made by Dr Ford, the Tribunal similarly considered that, while the comment would have been inappropriate if salacious, no such improper motive was proven. Dr Ford gave evidence of a possible explanation for the comment (he had no direct recollection of it) that was not entirely implausible, especially when that evidence was taken in account with other evidence given to the Tribunal about Dr Ford's character and his tendency to make comments that, while innocently made, might be misinterpreted by others.

**Conclusion**

9. As stated in para 157 of its Decision, the Tribunal ultimately determined each of the charges on their own facts. The Tribunal confirms that it conducted its deliberations on all of the charges over several hours immediately after the conclusion of the hearing when the members' recall and impressions of the witnesses, the evidence, counsels' submissions and advice and the documentary material were fresh. The Tribunal regrets any lack of precision or clarity about its reasons for the findings made in relation to the charge involving Ms W and apologises for any inconvenience caused to the Court or to the parties.

**DATED** at Wellington this 17<sup>th</sup> day of June 2003

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W N Brandon

Chair

Medical Practitioners Disciplinary Tribunal