MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO: 249/02/89D

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 **RICHARD WARWICK GORRINGE** medical practitioner of Hamilton

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Miss S M Moran (Chair)

Dr R W Jones, Dr C P Malpass, Dr A A Ruakere,

Mr G Searancke (Members)

Ms G J Fraser (Secretary)

Mrs G Rogers (Stenographer)

Hearing held at Hamilton on Monday 19 to Friday 23 August and Monday 18 to Thursday 21 November 2002

APPEARANCES: Ms M McDowell, the Director of Proceedings with Ms T Baker, counsel assisting

Mr A J Knowsley for Dr R W Gorringe, Mrs K Bicknall, counsel assisting.

Supplementary Decision

THIS supplementary decision should be read in conjunction with Decision No. 237/02/89D which issued on 5 August 2003.

The Substantive Decision

1. In its substantive decision, the Tribunal, after a lengthy and fully defended hearing, found proved the three charges against Dr Gorringe in respect of his patient Mrs Short (a) disgraceful conduct in respect of all the particulars pleaded (6) and of professional misconduct in all the particulars pleaded (24) (except for those laid in the alternative) and (b) in respect of his patient Ms Ghaemmaghamy of professional misconduct in all the particulars pleaded (12) (except those laid in the alternative).

2. In accordance with normal practice, details of the facts and circumstances giving rise to the charges together with the Tribunal's findings and reasons are very fully set out in the substantive decision. Accordingly, the Tribunal does not propose to traverse again, in any detail, those facts and findings.

3. The Director of Proceedings has filed submissions in respect of penalty as has Mr Knowsley as counsel on behalf of Dr Gorringe.

The Tribunal's findings

4. In summary, in general terms the Tribunal found:

(a) That Dr Gorringe in respect of Mrs Short over a six month period of consultations made untenable diagnoses of paraquat poisoning, cytomegalovirus (CMV/CMV toxin), Legionella infection and electromagnetic radiation sensitivity by undue reliance on peak muscle resistance testing (PMRT) to the exclusion of conventional medical diagnostic methods and when not supported by Mrs Short's clinical presentation.

(b) That PMRT is not a plausible, reliable or scientific technique for making medical decisions and that there was no plausible evidence that PMRT had any scientific validity and that therefore reliance on PMRT to make diagnoses to the exclusion of conventional and/or generally recognised diagnostic/investigatory techniques was unacceptable and irresponsible.

(c) That Dr Gorringe failed to obtain Mrs Short's informed consent either to the diagnostic techniques or treatments used.

(d) That he exploited Mrs Short.

(e) That he failed to adequately/appropriately treat Mrs Short or refer her for care in the face of her deteriorating condition.

(f) In respect of Mrs Ghaemmaghamy, Dr Gorringe made an untenable diagnosis of brucellosis of the intracellular kind by undue reliance on PMRT.

(g) He failed to obtain her informed consent either to the diagnostic technique or treatments used.

(h) He exploited her.

Submissions by the Director of Proceedings

5. Ms McDowell submitted that Dr Gorringe's name should be removed from the Register of medical practitioners because:

(a) His practice poses a threat to the health and safety of the public.

(b) The findings of the Tribunal are very serious, showing negligence to the point of recklessness and/or that the Tribunal's findings are to the effect that Dr Gorringe's

conduct displayed genial incompetence in, or obstinate indifference to, the care and management of his patients.

(c) To ensure that professional standards are maintained.

6. In support of her submission that Dr Gorringe's name should be removed from the Register, the Director referred to a number of matters under the heading of *"Relevant public interest factors and aggravating features"*. They included *"unsafe practice"*, *"exploitative practice"*, *"lack of insight"*, *"maintenance of professional standards"*, *"ability to continue to practise"*, and *"the extent of the misconduct"*.

7. With regard to *Unsafe Practice*, the Director submitted that in determining whether Dr Gorringe posed a risk to public health and safety the Tribunal could assess not only the seriousness of the findings it made in relation to the two particular complainants but the wider evidence relating to the nature of Dr Gorringe's practice and his treatment/ management of others (for example, the evidence of Mrs CF).

8. She submitted that Dr Gorringe used PMRT for every consultation referred to in the course of the hearing and that it was undisputed that PMRT was an integral part of his practice. In this regard she referred to the Tribunal's findings regarding PMRT.

9. She stated that Dr Gorringe relied on PMRT to diagnose serious, non-conventional conditions. She added that he based his treatment of patients on such diagnoses and in the case of Mrs Short (and a witness called on his behalf – Mrs CF) he required them to forego conventional medical treatment and instead relied on isopathic and homeopathic remedies as the mainstay of their treatment.

10. She referred to the Tribunal's finding in relation to the charge of disgraceful conduct that Mrs Short's condition deteriorated under Dr Gorringe's care and that such deterioration was due to inadequate treatment and management by him. She referred in particular to a passage from the substantive decision which stated:

> *Mrs Short was an anxious and vulnerable patient of which Dr Gorringe was aware. He took advantage of that and made his worrisome and obscure diagnoses without any credible evidence or foundation.*

> *It is readily apparent that he knew, or ought to have known, that his treatment could seriously compromise her wellbeing and he persisted with it despite its manifest lack of success. That was grossly irresponsible and unconscionable. The Tribunal is satisfied that it constituted disgraceful conduct.*

11. In the context of assessing Mrs Short's deterioration, she referred to the Tribunal's acceptance of Mrs Short's evidence which described the serious degree of her physical suffering as well as the adverse psychological, social and domestic effects this had on her.

12. The Director submitted that in the context therefore of Dr Gorringe's exclusive reliance on PMRT, his untenable and serious diagnoses made in reliance on PMRT, and his preparedness to hold a patient to a patently unsuccessful treatment regime without appropriate consideration for her physical or psychological wellbeing, this was clearly unsafe practice. She submitted that Dr Gorringe's risk, having regard to those factors, is ongoing and that his practice has the potential to seriously jeopardise the health and wellbeing of his future patients. She submitted that the only means of effectively protecting the public is by removing his name from the Register.

13. With regard to *exploitative practice*, the Director submitted that in addition to the three critical factors, that is, exclusive reliance on PMRT, untenable diagnoses, and preparedness to continue with unsuccessful treatment, which make Dr Gorringe's practice unsafe, there are further contextual factors which, in her submission, highlight the need for the public to be protected and which also operate as aggravating features to Dr Gorringe's conduct in the present case.

14. She referred to the evidence and the Tribunal's findings that both Mrs Short and Ms Ghaemmaghamy were influenced in their decisions to consult Dr Gorringe because of the fact that he was a medical practitioner.

15. She referred to the Tribunal's findings that both patients were vulnerable and were desperate for a cure and/or relief of their conditions and that Mrs Short was "*anxious and vulnerable*" and that Ms Ghaemmaghamy was "*desperate for a diagnosis*".

16. The Director referred to Dr Gorringe's own description of himself as a doctor of last resort specialising in second opinions for those persons who have been *"failed"* by other conventional medical practitioners.

17. Ms McDowell referred to the fact that these factors formed part of the basis for the Tribunal upholding that Dr Gorringe had engaged in exploitative practice in relation to both complainants.

18. Notwithstanding the evidence relating to the two complainants, the Director submitted that the evidence also supported the view that Dr Gorringe's practice is particularly targeted at vulnerable people desperate for a diagnosis and that he cultivates an image as a *"doctor of last resort"* offering hope where he believes conventional medicine has been unable to do so.

19. The Director submitted that by doing so the public is at risk while Dr Gorringe is still registered, of being misled as to the true nature of his practice with undue reliance on PMRT, unsustainable and unconventional diagnoses, and with the risk of inappropriate/ inadequate treatment. She has submitted that this risk of misrepresentation is heightened given the findings of the Tribunal that Dr Gorringe failed to obtain informed consent both as to diagnostic technique and treatment options in respect of both complainants.

20. With regard to *Lack Of Insight*, the Director has submitted that Dr Gorringe showed no insight as to the seriousness of his conduct in relation to either complainant. In support of this, by way of example, she referred to the fact that throughout the hearing Dr Gorringe continued to maintain that Mrs Short actually improved under his care, that she derived some benefit from his care, and that he did not cause or contribute to her deterioration. She further referred to the fact that throughout the hearing Dr Gorringe absolutely adhered to his diagnoses and the suitability of his treatment despite being confronted with contrary evidence or the fact that there was no evidence at all to support his theories. By way of example, she referred to his maintaining that the diagnosis of CMV toxin and Legionella infection of unknown serotype were linked to skin conditions despite the expert evidence to the contrary and without providing any evidence in support of his contentions.

21. She further submitted that there was neither remorse nor contrition demonstrated by Dr Gorringe towards either complainant in the course of the hearing.

22. The Director also referred to recent media comment by Dr Gorringe in response to the release of the Tribunal's decision that he continues to maintain he did nothing wrong and that he will continue to practise in a way that he is legally allowed to practise; and that he has publicly stated that the overall outcome of this for Mrs Short is that she has better skin than she has ever had before. The Director annexed a transcript from a Television One news item of 12 August 2003 to her submissions.

23. With regard to *Maintenance Of Professional Standards*, the Director submitted that there was a need for the medical profession to maintain appropriate standards and that some of the Tribunal's findings were so serious as to warrant the most severe penalty, that is, removal from the Register. She stated such findings included the gross inadequacy of Dr Gorringe's treatment and management of Mrs Short (to which reference has already been made).

24. The Director referred also to *Other Aspects Of Concern* relating to the Tribunal's findings which included that Dr Gorringe told Mrs Short that God had told him, following prayer, that she was only required to take six more histafen tablets and that while such conduct may be appropriate for a faith healer, it is totally inappropriate for a registered medical practitioner.

25. The Director also referred to Mrs Short's significant deterioration on 30 and 31 July when she called Dr Gorringe for assistance but was not given an appointment, no referral was made to another practitioner, there was no review of her condition at that time and she was not prescribed any conventional medication but instead she was mailed further homeopathic drainage drops. She referred to the Tribunal's description of this response as "*inadequate and inappropriate*".

26. Under the heading of professional standards, the Director also referred to Dr Gorringe maintaining his "*diagnoses*" in the face of objective evidence to the contrary.

27. By way of example she referred to Dr Gorringe's claim that Mrs Short was low in B12 when blood tests clearly indicated that her B12 levels were within normal limits.

28. She also referred to Dr Gorringe maintaining that Ms Ghaemmaghamy had brucellosis when she had tested negative for the disease.

29. Under the heading *"Ability to Continue Practice"* the Director submitted that a relevant consideration is that if Dr Gorringe's name were removed from the Register he would still be able to practise as an alternative, non-conventional practitioner; and that without registration as a medical practitioner there would be no opportunity for the public to be under the misapprehension that his methods have validity because he is a registered medical practitioner.

30. Under the heading *"The Extent of the Misconduct"* the Director submitted that it is a relevant consideration in the setting of penalty that this matter involved two complainants and also serious negligence over a number of consultations and a reasonable time period, particularly in relation to Mrs Short (six months).

31. The Director referred to the *"Victim Impact Statements"* annexed to her submissions in which the complainants outlined the physical, emotional and other effects on them of Dr Gorringe's treatment and management of them.

32. With regard to *"Mitigating Features"*, while the Director accepted that Dr Gorringe had refunded the cost of the consultations to both complainants, there were no other mitigating features.

33. Under the heading *"Conditions"*, the Director submitted that given the nature of the misconduct and the Tribunal's findings, the imposition of conditions on Dr Gorringe's practice, such as that he must practise subject to supervision, would not be in the public interest; and nor would it provide sufficient protection to the public. On the contrary, in her submission, it would send the wrong message to the public and the profession in respect of the Tribunal's findings that his management of these patients was seriously lacking.

34. Under this heading, the Director also referred to her earlier submissions regarding Dr Gorringe's lack of insight as being relevant as to whether the imposition of conditions would be an effective means of protecting the public.

35. Under the heading of a "*Fine*", the Director urged that a fine should be imposed and referred to the recent decision of the High Court in *Parry* (unreported High Court, Auckland, 15 October 2001 AP 61-SW01, Paterson J).

36. The Director also submitted that Dr Gorringe be *"Censured"*, and that he pay part or all of the costs and expenses of and incidental to the enquiry and hearing.

Submissions of Counsel on behalf of Dr Gorringe

37. Mr Knowsley submitted that the Director's submission that Dr Gorringe be *struck off* would be out of proportion in the circumstances.

38. He stated that Dr Gorringe had dedicated his professional life to doing his best for his patients; and that he offered a wide range of diagnostic and treatment options which are not available from most doctors.

39. He submitted that Dr Gorringe has a large base of very satisfied patients, some of whom gave evidence before the Tribunal when they recounted how they had been helped by Dr Gorringe and how satisfied they were with what he did for them.

40. He referred to a large number of patients who had written to Dr Gorringe expressing dismay at the possibility that he might lose the right to practise as a doctor and that some had expressed their feelings in very strong terms while others had simply offered their support and prayers for him. Copies of these were attached to his submissions.

41. Mr Knowsley submitted that if Dr Gorringe's name were removed from the Register those satisfied patients would lose out and their choice of the type of diagnostic aid and treatment options would be removed.

42. He referred to the Medical Council Guidelines on complementary, alternative or unconventional medicine and quoted the preamble to it. He stated that there was not an absolute ban on complementary, alternative treatments but rather the Medical Council had set out guidelines for ensuring that patients received information to allow them to make a choice and that Dr Gorringe's patients should have that choice. He submitted that such choice should

not be taken away from those persons because the choices offered are not regarded as evidence-based by the medical profession.

43. Mr Knowsley submitted that conditions could be imposed which ensured patients are aware of the Tribunal's findings that PMRT and homeopathy lack scientific validity and it would then be up to the patients whether they wished to exercise their right of choice to receive those complementary modalities. He suggested an information sheet setting out these findings could be incorporated into the conditions on practice and written consent from patients could also be a condition so that the Tribunal could be satisfied that patients have received the information from the Tribunal's findings and have made their choice of diagnostic technique and/or therapy.

44. He stated that Dr Gorringe had undergone both a competency review and a Health Committee investigation by the Medical Council. He stated that no health issues were identified.

45. Mr Knowsley stated in his submissions that Dr Gorringe is currently undergoing a competency programme under the Medical Council and that those reviews arose directly out of referrals to the Medical Council by the Health and Disability Commissioner in relation to the complaints by Mrs Short and Ms Ghaemmaghamy.

46. He stated that Dr Gorringe had already suffered both emotionally and financially from the hearing and that he had to take time off after the hearing as a result of the strain as such a proceeding brings with it.

47. He stated in his submissions that Dr Gorringe had informed him that as a direct result of the hearing Dr Gorringe's financial situation had suffered in that he had to take time off from his practice to prepare for the hearing, that he had to take time off to attend the hearing, and that he was told by his doctor to take time off following the hearing due to stress and, as a result, lost 11 weeks of income but that his practice expenses continued during that time.

48. He stated in his submissions that since the hearing Dr Gorringe has been on reduced hours on medical advice and has been suffering physical side effects causing a reduction in the hours he works and a consequent reduction in his weekly income.

49. Mr Knowsley has stated that Dr Gorringe has neither savings nor assets with which to pay a fine or costs.

50. He submitted that Dr Gorringe has defended what he believes to be right and that he passionately believes in what he is doing and his desire at all times has been to do the best for every patient. He stated that Dr Gorringe has the loyal support of the vast majority of his patients who wish to be able to consult him as their doctor.

The Law

51. The principal purpose of the Medical Practitioners Act is to ensure that members of the public are protected from unsafe practice. Section 3 provides "*The principal purpose of this 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."*

52. Section 110 of the Act sets out the penalties which the Tribunal may impose. However, a practitioner's name can only be removed from the Register where there has been a finding of disgraceful conduct as distinct from professional misconduct or conduct unbecoming a medical practitioner.

53. While it is not necessary to refer to all the cases which encapsulate the various principles relating to the protection of the public, the Tribunal refers to some of them.

54. In *Guy v Medical Council of New Zealand* [1995] NZAR 67 when referring to proceedings before the Medical Council of New Zealand under the previous Medical Practitioners Act (1968) the Court observed at p77:

> *"[Proceedings before the Medical Council] are designed primarily to protect the public from incompetent and improper conduct on the part of medical*

> *practitioners. The powers given to the Medical Council are exercised primarily in the interests of the public and the profession itself and are only incidentally penal in nature."*

55. In *Teviotdale v Preliminary Proceedings Committee of the Medical Council of New Zealand* [1996] NZAR 517 the Full Court observed at 520:

> *"It is well settled that the Council is entitled to exercise its disciplinary functions only in the public interest and while any decision of the Council to exercise its disciplinary powers will inevitably have a punitive effect, nonetheless it does not have jurisdiction to impose or enforce punitive sanctions against members of the medical profession where there has been no impact on the public interest."*

56. In *Pillai v Messiter* [No. 2] [1989] 16 NSWLR 197 Kirby P observed at 201:

> *"In giving meaning to the phrase "misconduct in a professional respect" in the context within which it appears, it must be kept in mind that the consequence of an affirmative finding is drastic for the practitioner. The purpose of providing such a drastic consequence is not punishment of the practitioner as such but protection of the public. The public needs to be protected from delinquents and wrongdoers within professions. It also needs to be protected from seriously incompetent professional people who are ignorant of basic rules or indifferent as to rudimentary professional requirements. Such people should be removed from the Register or from the relevant roll of practitioners at least until they can demonstrate that their displaying imperfections have been removed."*

57. In *Director of Proceedings v Parry* (unreported High Court Auckland 15 October 2001 AP 61-SW01) Paterson J held that the Tribunal can take into account the findings of professional misconduct and all contextual factors when determining whether a doctor's name should be removed from the Register.

Decision and Reasons

58. The Tribunal is unanimous in its view that Dr Gorringe's name should be removed from the Register of Medical Practitioners.

59. His treatment and management of Mrs Short was grossly irresponsible and unconscionable.

60. All the submissions made by the Director of Proceedings, which the Tribunal accepts, led to that conclusion. Having already set them out earlier in this decision, it is unnecessary to repeat them.

61. When asked to respond to the Tribunal's findings, Dr Gorringe has stated publicly he does not believe he has done anything wrong. The Tribunal is particularly concerned that Dr Gorringe still does not appear to appreciate the seriousness of his actions or to believe he has done anything remiss. Indeed, that appears to be confirmed by Mr Knowsley's submissions that Dr Gorringe defended what he believed to be right, and passionately believed in what he was doing. Dr Gorringe's belief in the accuracy of his diagnoses and in the efficacy of his unusual treatments is such that the Tribunal can have no confidence that, were he to continue in practice, his patients would be properly advised of their nature and limitations so as to permit an informed choice.

62. Nor is the Tribunal satisfied that it would be possible to devise and impose effective conditions on his practice so as to ensure members of the public would not be exposed to this risk.

63. The Tribunal is accordingly satisfied that in order to protect the health and safety of members of the public, nothing less than removal of Dr Gorringe's name from the Register will suffice.

Financial issues

64. Mr Knowsley made submissions on the parlous state of Dr Gorringe's finance. He informed the Tribunal Dr Gorringe had been forced to sell his home, now lives in rented accommodation and has a bank debt of $190,000 secured over a property worth only $120,000. Since the hearing, Dr Gorringe is said to have worked reduced hours, on medical advice, with a consequent reduction in his gross income of $1,000 per week.

65. The Tribunal is surprised that Dr Gorringe has neither savings nor assets. Throughout the hearing he maintained that he had some 12,000 patients, that he had a waiting list of up to three months, and that he charged an hourly rate of $250 and that his patients were well satisfied with him. In those circumstances, the Tribunal finds it surprising that a man of his years should have no assets and no savings and be in the position his counsel submits.

Fine

66. While the Tribunal would be entitled to impose a fine it has decided not to do so given its decision that Dr Gorringe's name should be removed from the Register and, with serious misgivings, his stated financial position.

Costs

67. Section 110(1)(f) of the Act confers on the Tribunal jurisdiction to order a medical practitioner to pay part or all of the costs and expenses of and incidental to:

(a) The investigation made by the Health and Disability Commissioner in relation to the subject matter of the charges.
(b) The prosecution of the charge by the Director of Proceedings.
(c) The hearing by the Tribunal.

68. In Dr Gorringe's case -

(a)	The costs of the investigation by the Commissioner and the prosecution by the Director of Proceedings were:	$116,649.57
(b)	The costs of the hearing by the Tribunal were:	$114,873.28

69. The Tribunal believes a distinction can be drawn when assessing the costs Dr Gorringe should pay in relation to the costs incurred by the Health and Disability Commissioner and the Director of Proceedings on the one hand and the costs incurred by the Tribunal on the other.

70. In *Vasan v Medical Council of New Zealand* (unreported High Court Wellington AP No. 43/91 18 December 1991) Jefferies J observed that in relation to the costs incurred by the Tribunal:

> *"… the choices between the [Dr] who was …found guilty … and the medical profession as a whole"*

71. These observations arise from the fact that the costs of the operation of the Tribunal are met in the first instance by the entire medical profession. The High Court has stated that it is not

unreasonable to require a professional to pay 50% of the costs incurred by the professional disciplinary body.

72. In *Cooray v Preliminary Proceedings Committee* (unreported AP23/94 High Court Wellington 14.9.1995), Doogue J reviewed the relevant authorities when considering an award of costs by the Medical Council under the previous 1968 Act and observed:

> *"Whilst I accept that the proportion of costs awarded in other cases cannot be a final determinator of what is a reasonable order for the costs in the present case, nothing has been put forward which would justify a proportion of costs in the present case considerably in excess of the highest proportion of costs awarded in any other case brought to the attention of the Court or upheld in earlier cases before this Court. It would appear from the cases before the Court that the Council in other decisions made by it has in a general way taken 50% of total reasonable costs as a guide to a reasonable order for costs and has in individual cases where it has considered it is justified gone beyond that figure. In other cases where it has considered that such an order is not justified because of the circumstances of the case, and counsel has referred me to at least two cases where the practitioner pleaded guilty and lesser orders were made, the Council has made a downwards adjustment. In cases before this Court where an appeal has been allowed to a greater or lesser extent the Court has, in reflecting that determination, adjusted the costs in a downward direction. In other cases where there has not been such conclusion the order for costs by the Council has, in general been upheld."*

73. The Tribunal, having considered all relevant factors, determines that Dr Gorringe should pay 50% of the costs of the Tribunal in this case.

74. With regard to the costs incurred by the Health and Disability Commissioner and the Director of Proceedings, the Tribunal has had regard to the following principles:

(a) A doctor found guilty following a disciplinary hearing should expect to pay costs of the Health and Disability Commissioner and Director of Proceedings. The extent to which a prosecution succeeds is a relevant factor for the Tribunal to take into account under this heading (in this case, the prosecution succeeded on all charges and in every particular).

(b) A costs award should reflect the complexity and significance of the proceeding.

(c) Costs should reflect a fair and reasonable rate being applied to the time taken to investigate the complaint as well as preparing for and conducting the prosecution. The emphasis is on reasonable as opposed to actual costs.

75. The Tribunal, having carefully assessed the reasonableness of the costs incurred by the Director of Proceedings, the claimed financial circumstances of Dr Gorringe, and the fact that Dr Gorringe has been found guilty of all three charges and in every particular, has determined that the Director of Proceedings is entitled to $46,659.83 being 40% of the amount claimed.

Orders and Conclusion

76. Accordingly, for the reasons set out above, the Tribunal makes the following orders:

(a) Dr Gorringe's name be removed from the Register of Medical Practitioners pursuant to section 110(a) of the Medical Practitioners Act 1995.

(b) Dr Gorringe is censured.

(c) Dr Gorringe is to pay $46,659.83 which represents 40% of the costs of the Director of Proceedings' investigation and prosecution and $57,436.64 which represents 50% of the Tribunal's costs, making a total payment of $104,096.47.

(d) A report of the Tribunal's substantive decision and this decision is to be published in the New Zealand Medical Journal.

77. The Tribunal suspends the effect of the above orders for a period of five working days from the date of this decision.

DATED at Wellington this 2nd day of October 2003

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S M Moran

Deputy Chair

Medical Practitioners Disciplinary Tribunal