

Medical Practitioners Disciplinary Tribunal

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DECISION NO: 13/97/5C

NAME OF RESPONDENT

IN THE MATTER of the Medical

NOT FOR PUBLICATION

Practitioners Act 1995

(Refer Paragraph 5 on page

24 of Decision)

-AND-

IN THE MATTER of a charge laid by a
Complaints Assessment
Committee pursuant to
Section 93(1)(b) of the Act
against **R** registered medical
practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL:

Mr P J Cartwright (Chairperson)

Dr R A Cartwright, Dr J Cullen, Dr A F N Sutherland,

Mr P Budden (Members)

Ms G J Fraser (Secretary)

Mrs K G Davenport (Legal Assessor)

Mrs E Huse (Stenographer)

Hearing held at xx on Wednesday 16 July 1997

APPEARANCES: Mr M McClelland for the Complaints Assessment Committee ("the CAC").
Ms J Gibson for Dr R ("the respondent").

SUPPLEMENTARY DECISION

This supplementary Decision should be read in conjunction with a Decision concerning the same parties which issued under Decision 97/5 on 22 July 1997. In Decision 97/5 findings were made that neither of Particulars 1 and 2 of the charge against the respondent had been established. This supplementary Decision now issues for the purpose of explaining the Tribunal's reasons for its findings.

1. THE BACKGROUND:

- 1.1 UP** until April 1996 Mr A had been a meat worker at B Limited's Meatworks in xx ("B"). On 23 April 1996 he was working on the hide puller at about 10.00 am. The back stiffener became caught up and in the course of attempting to untwist it he touched the probes of the stimulator arm and received an electric shock. The shock lifted him up off the platform on which he had been working and when his workmate turned the power off Mr A fell on to the concrete floor, landing on his back and hitting his head. Mr C who is the Safety Officer at B drove Mr A to see the Company doctor, Dr R, at his surgery at the xx Medical Centre in xx.
- 1.2 MR** A told the respondent that he had received an electric shock and had fallen on to the floor on his back. The respondent took Mr A's pulse and checked his heart and looked at his eyes.

When Mr A asked him whether he should have an x-ray because his back was sore, the respondent told him he should wait until the next day and if his back had not improved he should come back to see him.

1.3 **IN** the accident Mr A had burnt his fingers. Dr R looked at the burns and then had his nurse bandage them. His nurse also gave him something for pain relief.

1.4 **MR** C drove Mr A home. When Mr A told his wife that the respondent had told him to come back the next day if his back had not improved and get an x-ray, she was most concerned as she thought he should have had an x-ray straight away. Mr A telephoned the respondent's rooms and they picked up the x-ray forms that they had requested at about 1.30 pm that day. Mr A then had an x-ray of his lumbar spine at the xx X-Ray Laboratory. Subsequently the x-ray was reported as normal.

1.5 **AFTER** the x-ray Mr A felt considerably worse and his wife drove him to xx Hospital where he was admitted for observation over night.

1.6 **SHORTLY** after the accident Mr A and his mother went to see Dr R and told him that he did not want to see him any further. Mr A now sees the family GP, Dr D in xx.

2. PARTICULAR 1 OF THE CHARGE:

Failure on 23 April 1997 to take or obtain an adequate history and to take adequate notes of such in respect of the accident suffered by A.

EVIDENCE:**Evidence for the Complainant:****2.1 Mr A:**

He is now 32 years of age. He has worked for B for six years. After the accident he was off work until 7 January 1997 when he went back to do five half days a week.

2.1.1 WHEN he suffered the electric shock on 23 April 1996 he felt a terrible pain in his arms. He was standing on a platform and the shock caused him to recoil so that he fell about seven feet from the platform onto a concrete floor, landing on his back and hitting his head in the process.

2.1.2 HE does not remember very clearly what happened immediately after the accident. He thinks he walked outside, but has been told that he had to be helped out, and that he was telling everybody he did not want an ambulance. His brother, who also works at B, helped him over to see the nurse. The nurse said they should go to see the Company doctor.

2.1.3 THE Company doctor is the respondent. Mr A had seen him once or twice before. When he and Mr C arrived at the respondent's premises the waiting room was crowded. He was taken straight into see the respondent who asked him to lie down on an examination couch. His back was too sore and he told the respondent he could not lie down. The respondent said that was OK, just to sit where he was. He sat on the edge of the couch.

2.1.4 **IN** recounting the accident to the respondent he was almost sure that he told him he had fallen about seven feet. The respondent asked him what the voltage from the electric shock was but he did not know, and neither did Mr C.

2.1.5 **AFTER** taking his pulse and checking his heart and looking at his eyes, the respondent got his nurse to bandage three of his fingers burnt from the hot water on the stimulator after which Mr C drove him home.

2.2 Mrs A:

2.2.1 **MRS** A is currently a full time mother and was at home when her husband arrived unexpectedly from work with Mr C on 23 April 1996. She went out to the car and found him in the front seat looking terrible. She had to help him get out of the car, because he could not get out by himself. He was walking with his back all hunched over and looking very uncomfortable. He was a terrible colour, "white as a ghost". When they got inside her husband could not lie down because his back was too sore.

2.2.2 **BEFORE** the accident, her husband had hardly ever had a sick day, and was very fit and strong. After the accident, he suffered from a lot of pain and had real problems sleeping and got quite depressed. He was off work for some time, but has been increasing his hours since January this year.

2.3 Dr D:

2.3.1 **D** is a registered medical practitioner practising as a general practitioner in xx and Mr A is one of his patients.

2.3.2 THE evidence given by Dr D is not of direct relevance to either particular of the charge. Nonetheless his evidence was of general application in explaining the main problems suffered by Mr A following his accident. Tendon damage in the right shoulder was confirmed by ultrasonography and psychological difficulties were encountered. When last seen in June of this year Mr A was working without too many problems.

2.4 Dr R Saunders:

2.4.1 ROSS Saunders is a duly qualified and registered medical practitioner and Fellow of the Royal New Zealand College of General Practitioners who has resided and practised in Lower Hutt from 1967 to the present day.

2.4.2 DR Saunders had been given material relating to Mr A's complaint against the respondent, and had been asked to comment in respect to the history taking, the notes recording the event, the treatment, and any investigation.

2.4.3 DR Saunders explained that in this particular case the only recorded history was a patient's statement which was noted in the third box of an ACC claim form (M46). There was no mention in the notes of the height that Mr A fell from, nor was it stated how he landed. The examination notes referred to the examination of the cardiovascular system, and in particular the pupils and burns to the left middle finger were noted. The back injury was also noted. There was no record of the extent of the burns or the thickness. There was no record of the examination of the chest or the skeletal system, including the spine.

2.4.4 DR Saunders said he would have expected that a prudent GP, when attending a patient who had fallen from some seven feet and landed on his back and then complained of back pain, to have examined and to have made notes relating to his examination of the skeletal system including the spine.

2.4.5 NOTING that Mr A had re-attended the respondent's surgery in the afternoon he felt that a prudent GP would, for his own protection, have re-examined Mr A at that time.

Evidence for the Respondent:

2.5 The Respondent:

2.5.1 THE respondent qualified MB ChB 1953 in New Zealand; he is a Member of the Royal College of General Practitioners (1968) and a Member of the Royal New Zealand College of General Practitioners (1974). He has been practising as a general practitioner since his registration in 1955. In addition to his practice at xx Medical Centre, he also works one day a week at B. He has worked there for the past 23 years, and has had lengthy experience with the medical problems that arise in the meat processing area.

2.5.2 WHEN Mr A walked in to the surgery accompanied by Mr C, he was seen straight away which is the normal procedure with any injury. He did not appear to be shocked. The respondent specifically recalled Mr A walking down to the treatment room.

2.5.3 NEITHER Mr C nor Mr A could tell him the voltage in response to questioning. He was advised by Mr C that the shock was low voltage as an isolating lamp would protect from a severe shock. His history taking was directed towards the voltage. He was not told that Mr A fell off a seven foot platform; the impression he gained from discussing the matter with Mr C and Mr A was that Mr A had jumped back off the platform and fallen on his back. He did not recall the height of the platform being mentioned. He was told that Mr A was fully conscious at the time that the accident occurred, and had refused an ambulance and wanted just to go home.

2.5.4 THE respondent assessed Mr A after he had walked into the surgery. He checked his heart sounds, which were normal, and his pupils which were also normal. He took his pulse and blood pressure both of which were in the normal range of a person of Mr A's age. His colour was normal. There was no sign that his peripheral circulation had been affected. He was satisfied that his cardiovascular system was normal and that he was not concussed.

2.5.5 MR A had a second degree burn on his left middle finger which was a heat burn, consistent with a burn coming from heat. It was not a burn consistent with electrocution. His fingers were dressed and he was given solprin for pain relief.

2.5.6 AFTER Mr A had got up from the couch to leave the surgery he mentioned quite calmly that his back was sore. The area that he described as being sore was the middle of his back. He had free movement of his back and did not have any increase in pain. When he examined the back there was no local tenderness. Mr A's

description of the pain was muscular. The respondent's assessment of Mr A's pain was that it appeared to be muscular at the time, and was consistent with his body having received an electrical shock with subsequent fall.

2.5.7 HE gave Mr A a follow-up appointment for the next morning and told him to go home and rest. He understood that there would be someone at home to look after him and suggested to Mr C that he take Mr A home. He asked that he be contacted if there were any further concerns.

2.5.8 AT the time of Mr A's appointment he completed an ACC form on his behalf. The diagnosis and description of injury showed he had noted that Mr A had "burn left middle finger, back injury". He wrote that notation on the ACC form at the time with a view to transferring it to Mr A's records at B when he was next at the plant. That was his previous practice which has now changed. Now all B staff who the respondent sees at the surgery have files opened for them on his computer which are transferred later to the B files.

2.5.9 WITH his private patients their notes are written in full in their file and the ACC form (M46) is just an attached document. That is now his procedure for B staff also. He completed an ACC further medical certificate form (ARC18) which noted under impairment and clinical management details that Mr A had suffered an electric shock with burns to hand. The complicating factor that he noted was muscle pain.

2.6 Mr C

2.6.1 C is employed by B as the Safety Officer at their Pacific Plant. When he reached the scene of the accident, Mr A, the supervisor, Mr E, and the plant's nurse, Ms F, were already present. Mr A was fully conscious, and his brother was with him. Mr A refused Mr E's suggestion to leave the accident scene in an ambulance, and got quite aggressive. His brother calmed him down and he went to the first aid room with Nurse F and himself. His impression at the time was that Mr A seemed quite alright. He was coherent and his principal wish was to go home. Because this was clearly unsatisfactory, arrangements were made for him to see Dr R.

2.6.2 MR C confirmed the evidence of Mr A and the respondent as to arrival at the surgery and immediately being seen by the respondent. Although he told the respondent that Mr A had had an electric shock from a stimulator and had been thrown off and landed on concrete, he did not know what the voltage of the equipment was at that time. He was lead to believe that there was a very low voltage at that source. He told the respondent that Mr A had fallen and landed on concrete although he had no idea at the time how far Mr A had fallen. He could not recall Mr A mentioning a height. He could remember Mr A sitting on a soft table for the respondent to examine him.

2.6.3 AS he was leaving Mr A told the respondent he had a sore back. Mr A was told by the respondent that he should go home and rest, but that if he felt any further discomfort he should ring him. Mr C confirmed that the respondent made an appointment for Mr A for the following morning.

2.7 Ms F

2.7.1 F is a state registered nurse who has been employed for the past 17 years as the first aid nurse at B. She has had extensive experience with the types of injuries which occur in a meatpackers and exporters business. She could recall that there had been three electric shock injuries during the time she had worked at B.

2.7.2 IN confirming Mr C's evidence as to events at the accident scene, Ms F explained that Mr A, although very distressed and agitated, was walking freely and he accepted that he could not go home until he had been medically checked out. Mr A was coherent when he was speaking with her and agreed to be taken by Mr C to see the respondent.

2.7.3 MR A was dressed in his gumboots, trousers, and a t-shirt. There were no signs of circulatory problems. She checked his pulse which was normal. In response to a question about how he was feeling, he said that he had a bit of a sore back and burns on his hands. She looked at the burns, which in her assessment were caused by hot water.

2.8 DISCUSSION AND CONFIRMATION OF FINDING AS TO PARTICULAR 1 OF THE CHARGE:

2.8.1 THE first Particular of the charge relates to the respondent's claimed failure to take or obtain an adequate history and to take adequate notes in respect of the accident. It is unarguable that the purpose of taking a history is to try and establish a differential diagnosis and that notes should be made to record the essentials of the history and examination which was undertaken.

- 2.8.2** **IN** the opinion of Dr Saunders the medical notes made by the respondent as they appear in the ACC form (M46) filled in at the time of consultation are not of a standard expected from a general practitioner. In his view the recorded history is brief and makes no mention of the height that Mr A fell from nor how he landed. Details such as the extent of the burn or its thickness are not recorded. Nor is there any record of any examination of Mr A's chest or skeletal system including the spine.
- In Mr Saunders' opinion a prudent general practitioner when attending a patient having fallen from some seven feet and landed on his back and then complained of back pain, would have examined and made notes relating to that examination.
- 2.8.3** **THERE** are two elements to the first Particular of the charge, failure to take or obtain an adequate history, and failure to take adequate notes. Each element will be examined in turn.
- 2.8.4** **DR** Saunders' evidence was that a prudent medical practitioner needs to do a lot more than what was done by the respondent in obtaining the history that he took. In the Tribunal's view an important issue in examining whether or not the history was taken appropriately was the question of how far Mr A fell. The evidence from the respondent was that he was not quite certain. The respondent knew that Mr A had a fall but not the height from which he fell and he said that he gained the impression from Mr C and Mr A that it was not very great. Mr C's evidence was that he did not know how far Mr A had fallen because he was not there at the time. However, Mr A was definite that he had fallen off a seven foot high platform and that he told the respondent this. When cross-examined he said that he was almost sure he told the respondent that.

2.8.5 IT is necessary for the Tribunal to determine if the information that the respondent was able to glean and did glean, about the accident from the questions that he asked of Mr A and Mr C, was sufficient, or whether he ought to have done more to find out how far Mr A fell, where the pain was, and whether he ought to have conducted a more thorough examination of his spine. The question then, for the Tribunal, is what weight does it place on the fact that apparently no attempt was made by the respondent to find out the height of the fall. The further question is whether that failure was critical in terms of the obligation on the respondent to take a full history of the accident event.

2.8.6 HAVING given careful consideration to the question of whether there was a failure on the part of the respondent to obtain an adequate history, it is the Tribunal's assessment that this aspect of the charge has been established. The information pertaining to the height from which Mr A fell was obviously available and if Mr A is to be believed, and he is not disbelieved, then it would seem clear enough that he did relay this information to the respondent who, in turn, would appear to have placed little reliance on it.

2.8.7 CONCERNING the second element of the first Particular of the charge, there has been an admission by the respondent that his notes were deficient. He has acknowledged that the notes which he took, which are recorded in the ACC form (M46) were insufficient. That admission is proper and is accepted by the Tribunal.

2.8.8 HAVING made a finding that the respondent failed to take or obtain an adequate history in at least one respect, and having accepted his admission that his notes were

deficient, it is necessary to determine whether such deficiencies amount to conduct which reflects adversely on the respondent's fitness to practise medicine. This entails a consideration of the rather vexed question of the meaning of Section 109(c) of the Act which requires, for a "charge of conduct unbecoming a medical practitioner" to be proved, an added requirement to be met that "that conduct reflects adversely on the practitioner's fitness to practise medicine". As was observed by Mrs Davenport when giving her directions as Legal Assessor towards the conclusion of the hearing, this is not an easy issue for the Tribunal to answer, particularly because there are no clear guidelines in the legislation as to how that determination should be made.

2.8.9 MR McClelland has submitted that the Section 109(c) qualification has been added to ensure that the Tribunal does not take steps against a practitioner unless the offending has a bearing on his or her fitness to practise medicine.

2.8.10 BOTH Mr McClelland and Ms Gibson submitted that guidance can be taken from *B v Medical Council (High Court, Auckland, HC/11/96 Elias J, 8 July 1996)* in which at P.15 of her Judgement Her Honour stated:

"There is little authority on what comprises "conduct unbecoming". The classification requires assessment of degree. But it needs to be recognised that conduct which attracts professional discipline, even at the lower end of the scale, must be conduct which departs from acceptable professional standards. That departure must be significant enough to attract sanction for the purposes of protecting the public. Such protection is the basis upon which registration under the Act, with its privileges, is available. I accept ... that a finding of conduct unbecoming is not required in every

case where error is shown. To require the wisdom available with hindsight would impose a standard which it is unfair to impose. The question is not whether error was made but whether the practitioner's conduct was an acceptable discharge of his or her professional obligations. The threshold is inevitably one of degree. ... The disciplinary process in part is one of setting standards."

2.8.11 THE Tribunal has received some guidance from the above extract taken from *B v Medical Council*. In its view the critical assessment which needs to be made, to ensure proper regard is given to the Section 109(c) gloss, is whether the "departure [is] significant enough to attract sanction for the purposes of protecting the public".

As was explained by her Honour, such protection is the basis on which registration under the Act, with its privileges, is available.

2.8.12 IN carrying out that assessment in the instant case, the Tribunal is not satisfied, on the balance of probabilities, that the deficiencies identified on the part of the respondent reflect adversely on his fitness to practise medicine to the extent that they are so significant as to attract sanction for the purposes of protecting the public. A number of reasons are given for this conclusion.

2.8.13 FIRST, the principal deficiency in taking the history of the accident was the respondent's failure to establish that Mr A had fallen from a height of not less than seven feet. Although this was a significant omission on his part, perhaps to some extent it is understandable given that his primary focus, probably to the exclusion of many other factors, was the electrocution aspect of the accident. From the evidence

it is clear that the respondent was more concerned to establish that Mr A had suffered a low voltage shock so as to be able to exclude the possibility that he had suffered a severe shock. As was stated by the respondent at paragraph 6 of this Brief of Evidence "My history taking was directed towards the voltage". For the respondent the emergency was a patient who had suffered an electric shock. In that situation it is understandable that the respondent's focus was on that shock. Otherwise, with the exception of ascertaining the height of the fall the Tribunal considers that he took a reasonably adequate history and he performed certain clinical examinations which Dr Saunders confirmed were appropriate for a patient presenting such as Mr A.

2.8.14 **SECONDLY**, although there is no question that the notes that the respondent provided on the ACC form (M46) were deficient, that was a direct result of the system, albeit flawed, which he had been operating at the time for B staff. The respondent gave evidence that he had subsequently changed that system. He now records independently on his surgery computer the history and clinical examinations that are undertaken, separately to the M46 forms which he was not doing at the time in question.

2.8.15 **IT** will be recalled Dr Saunders spoke in his evidence about prudent general practice.

In looking at the question of whether the failures in question reflect adversely on a practitioner's fitness to practise medicine, it is the Tribunal's judgement that substantial failure well below the reasonable must be the criterion. In that regard the Tribunal considers that the context must be viewed not only as it was at the time of the event under scrutiny, which is well over 12 months ago, but also within the context of

current practice. The respondent has told us that he has amended his practice in relation to taking notes, that he admits that the notes that he took were not of much assistance to him.

2.8.16 FINALLY it can be said for the respondent that his notes, although obviously a poor and inadequate record long term, were probably temporarily passable given his intention to see Mr A the following day. At the time of his attendance on Mr A it may be arguable that the respondent's notes were not, so to speak, set in stone. That Mr A did not return as a patient of the respondent placed in stark relief the obvious inadequacy of his notes.

3. PARTICULAR 2 OF THE CHARGE:

Failure on 23 April 1996 to arrange for an x-ray examination at the time of initial assessment.

3.1 BY reference to the evidence, it is not necessary to go into the same detail in respect of this second Particular of the charge.

3.2 MR A's evidence was that he was asked by the respondent to lie down on an examination couch, but that his back was too sore and that he told him that he could not lie down. Instead he sat on the edge of the couch. Mr A said "I asked him whether I could have an x-ray of my back, because it was so sore, but he said no, I should wait until the next day, and if my back was still no good I should come back to see him." (Paragraph 16 p.4 of Brief of Evidence). When he arrived home his wife had to help him out of the car. He said he was walking like a

hunchback. His wife asked if he had had an x-ray, and was very upset when he told her that he had not had an x-ray.

3.3 AFTER talking with his wife Mr A said that he called the receptionist back at the respondent's rooms and told her that he really wanted to have an x-ray. His wife helped him into the car and took him back to the respondent's clinic at 1.30 pm. He went in and got the papers from the receptionist. He took the form from her and went to Royston X-ray Lab for an x-ray straight away.

3.4 SUBSEQUENTLY Mr A's wife decided that he should go to the hospital "where he could be properly checked and examined". Mr A said they explained to the doctor on duty at the hospital what had happened who "was very concerned and said I should have been brought into the hospital straight after the accident had happened". Mr A was admitted to hospital overnight because it was thought he may have bruised a kidney and was put on a saline drip.

3.5 IN his evidence Dr Saunders explained that he would have expected a prudent GP, when assessing an accident such as a patient's fall from seven feet onto his back, and if x-ray facilities were readily available, to have obtained an x-ray as soon as possible, to exclude any occult damage, especially to the spine.

3.6 IT was the respondent's evidence that after Mr A had got up from the couch to leave the surgery he mentioned quite calmly that his back was sore. The area that he described as being sore was the middle of his back. He had free movement of his back and did not have any increase in pain. There was no local tenderness. The respondent explained that Mr A's

description of the pain was muscular. The respondent acknowledged that Mr A asked about an x-ray, and that he told him that it would be more appropriate to do it the next day, if he still had pain. Under questioning at the hearing the respondent elaborated that his assessment of appropriateness to carry out an x-ray the following day was based on his judgement that Mr A's back pain was not localised but that if it subsequently did become localised, then the appropriateness of carrying out an x-ray would be unquestionable. The respondent explained that Mr A's pain appeared to be muscular at the time and was consistent with his body having received an electrical shock with subsequent fall.

3.7 **THE** respondent said he gave Mr A a follow-up appointment for the next morning and told him to go home and rest. At lunch time the same day his surgery was telephoned by Mr A advising that he would like an x-ray done that day. The respondent said that of course this was a perfectly reasonable request, so he wrote out a form for an x-ray and noted it as being urgent because it was to be done the same day.

3.8 **THE** respondent said that Mr A did not keep his appointment for the following day and subsequently his surgery staff relayed to him that Mr A had been admitted to hospital overnight for observation in case he had a bruised kidney. No damage was detected and on further inquiry he was told that Mr A's x-rays were normal. Thereafter it was his understanding that Mr A consulted his own general practitioner, Dr D.

3.9 **IN** evidence it was Mr C's recollection that Mr A sat on a soft table for the respondent to examine him. He could not recall any discussion between Mr A and the respondent concerning the former's request to have an x-ray. Mr C said that as Mr A was leaving, he told the

respondent that he had a sore back. The respondent said that he should go home and rest, but that if he felt any further discomfort he should ring the respondent. He confirmed that the respondent made an appointment to see him the following morning. Mr C said he then took Mr A home in the company vehicle on the respondent's advice.

3.10 IT was Ms F's evidence that she had a telephone conversation with Mr A about 1.00 pm on the day of the accident. She said he told her that his back was very sore and that he had not been x-rayed. Ms F said she explained to Mr A that sometimes the doctors do not x-ray immediately, but that if he was too sore he should go and pick up the forms that the respondent had said he would prepare. Ms F said that Mr A confirmed that he would go back to the respondent and ask to have the x-rays done.

3.11 DISCUSSION AND CONFIRMATION OF FINDING AS TO PARTICULAR 2 OF THE CHARGE:

3.11.1 THERE is no dispute that it was a conscious decision on the part of the respondent that it would be more appropriate for an x-ray to be done on the day following the accident rather than on the day of the accident itself. Given that Mr A had fallen some seven feet and landed on his back and then complained of back pain, Mr McClelland submitted that the respondent was obliged to arrange for an x-ray immediately to exclude any occult damage, particularly to the spine. In these circumstances Mr McClelland argued that a GP would be failing to discharge his professional obligations if an x-ray was not ordered.

3.11.2 HAVING reviewed the evidence it is the view of the Tribunal that the force of these submissions does not match the evidence, particularly the evidence of Dr Saunders.

He was asked by Ms Gibson if there was any real room for criticism that a spinal x-ray was not ordered at the time, but was ordered on the same day some three hours later and marked "urgent". Dr Saunders conceded that in this particular case it made no difference whether the x-ray was undertaken immediately following the accident or a few hours later. Dr Saunders made it clear, but speaking only for himself, that he would have ordered an immediate x-ray. Dr Saunders also conceded that not every GP would x-ray someone who had a fall, and obviously neither would this be the practice of all hospitals.

3.11.3 THE Tribunal's view is that it was the respondent's clinical responsibility and judgement to determine whether and when to carry out an x-ray examination of Mr A's back. Having had some of the history, admittedly less than optimum, and examined Mr A, he decided that the pain was muscular and that an x-ray was not immediately necessary. That the subsequent x-ray was normal supports his decision.

3.11.4 ALSO it must be borne in mind that the respondent never refused an x-ray at the initial consultation. He said that he wished to see whether the pain got worse or not. When it became clear that the family were concerned about it enough for the x-ray form to be completed the respondent appropriately, in the Tribunal's view, enabled one to be completed so that Mr A could have his x-rays taken. Furthermore whether the respondent ordered an immediate x-ray or one a few hours later seems to have made little practical difference in the scheme or the outcome of Mr A's injury. Although

obviously distressed and in some pain following the accident, Mr A was apparently reasonably mobile and his x-rays were completed on the day of the accident.

3.11.5 THE Tribunal is obliged to conclude that the second Particular of the charge is not sufficient to found any disciplinary action against the respondent. Thus it becomes unnecessary to consider, in respect of the second Particular of the charge, the Section 109(c) qualification of adverse reflection on "fitness to practise medicine".

- 4. IT** is noted that a Notice of Appeal has been filed in the District Court at Wellington against the Tribunal's decision on the ground that it erred as a matter of law and fact in reaching its decision and that more specific grounds will be provided once the reasons for the Tribunal's decision have been made available.
- 5. THE** parties are reminded that this hearing is the subject of an order as to privacy which contained orders prohibiting publication of names and any identifying information about either party. These orders will remain in force pending determination of the appeal by the District Court.

DATED at Auckland this 26th day of September 1997

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P J Cartwright

Chairperson

Medical Practitioners Disciplinary Tribunal