Medical Practitioners Disciplinary Tribunal

PO Box 5249 Wellington Telephone (04) 499-2044 Facsimile (04) 499-2045
All Correspondence should be addressed to The Secretary

DECISION NO: 19/97/8&9C

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 **H** medical practitioner of xx and **G** medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mrs W N Brandon (Chairperson)

Dr R A Cartwright, Dr J W Gleisner, Dr A D Stewart

Ms S Cole (Members)

Mr R Caudwell (Secretary)

Ms K G Davenport (Legal Assessor)

Mrs G Rogers (Stenographer)

Hearing held at xx on Tuesday 12 August 1997

APPEARANCES: Mr K W Harborne for the Complaints Assessment Committee ("the CAC").

Mr A J Knowsley for Dr H and Dr G ("the respondent").

SUPPLEMENTARY DECISION:

THIS supplementary decision should be read in conjunction with Decision No. 11/97/8&9C which issued on 12 September 1997. In that Decision findings were made by the Tribunal that:

1. **THAT** Dr H, medical practitioner of xx on or about 28 September 1990 and in the course of her management of A, failed to recognise the significance and therefore to act on the deteriorating Gestational Proteinuric Hypertension and that constituted conduct unbecoming a medical practitioner which reflected adversely on Dr H's fitness to practise medicine;

2. **THAT** Dr G, medical practitioner of xx, on or about 29 September 1990 in the course of his management of Mrs A failed to recognise the significance of the abnormal CTG trace; and delayed in initiating steps to deliver Mrs A's baby after his initial assessment of the patient, and that constituted professional misconduct on the part of Dr G.

DECISION 11/97/8&9C concluded with an invitation to counsel for the CAC and for the respondents respectively to make submissions as to penalties. Those submissions having now been received, the Tribunal makes the following orders pursuant to Section 154(f) of the Medical Practitioners Act 1995:

1.0 ORDERS - DR H:

1.1 **THAT** the respondent be censured.

1.2 **THAT** the respondent be fined $450.00 (the maximum penalty permitted in terms of the Medical Practitioners Act 1968 being $1000).

1.3 **THAT** the respondent pay $5,652.10 which represents 30% of the costs of and incidental to the inquiry by the CAC, prosecution of the charge by the CAC and the hearing of the charge by the Tribunal.

1.4 **THAT** the Decision may be published provided only that the names and details of any of the parties are not to be published.

1.5 **THE** respondent advised the Tribunal that she no longer carries on an obstetrical practice. That being the case, the Tribunal orders that the respondent is not to resume her practice of obstetrics, and is not to undertake obstetrical care of any patient beyond a first trimester of pregnancy unless the respondent first advises the Medical Council so that her competence may be reviewed under Part 5 of the 1995 Act. The Tribunal also orders that any such resumed obstetrical practice on the part of the respondent is to be carried on under supervision for a period of not less than 12 months.

2.0 ORDERS - DR G:

2.1 **THAT** the respondent be censured.

2.2 **THAT** the respondent be fined $600.00 (the maximum penalty permitted in terms of the Medical Practitioners Act 1968 being $1000).

2.3 **THAT** the respondent pay $5,766.61 which represents 30% of the costs of and incidental to the inquiry by the CAC, prosecution of the charge by the CAC and the hearing of the charge by the Tribunal.

2.4 **THAT** the Decision may be published provided only that the names and details of any of the parties are not to be published.

2.5 **THE** respondent advised the Tribunal that he no longer carries on an obstetrical practice. That being the case, the Tribunal orders that the respondent is not to resume his practice of obstetrics, and is not to undertake obstetrical care of any patient beyond a first trimester of pregnancy unless the respondent first advises the Medical Council so that his competence may be reviewed under Part 5 of the 1995 Act. The Tribunal also orders that any such resumed obstetrical practice on the part of the respondent is to be carried on under supervision for a period of not less than 12 months.

3.0 REASONS FOR ORDERS:

3.1 CONDITIONS OF PRACTICE:

3.1.1 **BOTH** respondents informed the Tribunal that they no longer practise obstetrics. Similarly, both respondents indicated to the Tribunal that the outcome of this present case was a factor in their respective decisions not to offer obstetrical care to their general practice patients.

3.1.2 **IN** light of the findings of the Tribunal on the charges faced by Dr H and Dr G, together with the serious and permanent deleterious outcome of the deficiencies in their care of Mrs A identified in the course of the hearing, and in the Tribunal's decision, the Tribunal might have been inclined to order a period of suspension had either practitioner still been involved in obstetrics.

3.1.3 **THAT** is not the case, nevertheless the Tribunal considers it appropriate that both doctors adhere to their assurances given to the Tribunal that they do not intend to resume practising obstetrics in their general practices. In ordering that neither practitioner is to offer obstetrical care to patients beyond the first trimester of their pregnancy, the Tribunal is intending to give effect to those assurances, whilst bearing in mind the practical necessity to permit both doctors to offer care and treatment to the patients within their general practice who may require care and/or advice in early pregnancy.

3.1.4 **THE** Tribunal is aware of the Medical Council's desire of achieving conditions on practise which have the potential of delivering useful results and which are capable of ready implementation. Obviously the orders made by the Tribunal are dependent upon both doctors advising the Medical Council of their intention to resume obstetrical practise, if either of them decide to do so at some time in the future.

3.2 **CENSURE:**

THE respondents have been found guilty of, in the case of Dr G, the charge of professional misconduct and, in Dr H's case of conduct unbecoming which reflects adversely on her fitness

to practise medicine. Both charges are serious, particularly in light of the tragic results which flowed from their shortcomings in the management of Mrs A's labour and delivery. An official expression of disapproval must be an inevitable outcome of such offending.

3.3 FINE:

3.3.1 **APPLYING** the transitional provisions of Section 154 of the 1995 Act, the maximum fines in this case cannot exceed $1000 for each doctor.

3.3.2 **FOR** both respondents, counsel has accepted that a censure and fine are appropriate, but submitted, on behalf of Dr G, that the fine should reflect the conduct of the doctor and not the outcome of the delivery. The Tribunal acknowledges that there is some force in counsel's submission that Dr G should not have been placed in the situation he was as a GP with no obstetrician on call for the xx district on the afternoon Mrs A was admitted. However, Dr G had undertaken the Diploma in obstetrics course and examination at xx University and, rightly or wrongly, he accepted responsibility for the safe delivery of Mr and Mrs A's child. Further the expert evidence given, both on behalf of the CAC and Dr G, was consistent that the CTG tracing obtained by Dr G was one of the less difficult traces to read given the clinical context. Dr G did detect abnormalities immediately he saw the CTG tracing and, having appreciated the existence of abnormalities and the degree of the CTG abnormality, it was mandatory for him to have performed an artificial rupture of membranes. Whilst Dr G was not a specialist obstetrician, nevertheless he was a practitioner with a Diploma in Obstetrics and had Dr G taken the most basic of precautions the outcome might have been different.

3.3.3 **TAKING** into account penalties imposed under the previous legislation offers some assistance. Even given the relatively low level of fines, it appears to have been rare for a practitioner to be fined the maximum sum of $1000. If there is any pattern to be applied from previous cases, then fines of the maximum amount are to be reserved for the most serious cases of misconduct or dishonesty.

3.3.4 **IN** Dr H's case, she was found guilty of conduct unbecoming. However, if Dr G's conduct can, on the scale of matters amounting to professional misconduct, be said to fall at the lower end, then, it is the Tribunal's view that Dr H's conduct falls at the upper end of conduct unbecoming. In making its decision, it was the Tribunal's finding that Dr H failed to put in place any sufficient management plan and failed to plan for Mrs A's continuing care either as a result of her examination when Mrs A presented for a routine visit on the Friday afternoon, or the next morning after Mrs A presented at xx Hospital in labour.

3.3.5 **THE** Tribunal determined that, at a minimum, Dr H's management of Mrs A should have included her contacting xx Hospital to inquire into whose care she was placed and to speak directly to that doctor. Dr H did neither. It was the Tribunal's finding that Dr H, while she professed technical expertise, did not bring to bear any, or any sufficient clinical judgement in the sense of applying the clinical information she obtained to a total clinical context and to the formulation of a plan for the safe management of Mrs A's labour and delivery.

3.3.6 **ON** the basis of the Tribunal's findings, the submissions made on behalf of Dr G and Dr H, and penalties imposed under the previous legislation, the Tribunal considers that fines of $600.00 and $450.00 are appropriate. The Tribunal considers that these fines are appropriate both on an independent basis and relatively in the context of each doctor's part in the events giving rise to the charges.

3.4 COSTS:

3.4.1 **PURSUANT** to Section 110 of the 1995 Act the Tribunal has the power to order the respondents to pay part or all of the costs and expenses of and incidental to the inquiry and the hearing. Powers to make orders as to costs pursuant to the 1968 Act are equally applicable to the Tribunal's powers under the 1995 Act.

3.4.2 **ONCE** again, some guidance as to the appropriate levels of awards of costs in medical disciplinary proceedings can be obtained from the consideration of early decisions of the Courts. In this regard, the Tribunal relies on the statement of Justice Richardson in *Collector of Customs v Lawrence Publishing Co Ltd* [1986] 1 NZLR 404;

"Adherence to past decisions promotes certainty and stability. People need to know where they stand and what the law expects of them. So do their legal advisers. And a Court which freely reviews its earlier decisions is likely to find not only that the Court lists are jammed by litigants seeking to find a chance majority for change, but also that the respects of the law on which our system of justice largely depends is eroded."

3.4.3 **IN** *Gurusinghe v Medical Council of New Zealand* [1989] NZLR 139 the Court held that an order to pay costs amounting to approximately half of the actual expenses incurred was not excessive and noted that the ordering of payment of costs was not in the nature of the penalty but rather to enable the recovery of costs and expenses of the hearing.

3.4.4 **IN** this present case, the Tribunal recognises that Dr G accepted that there were shortcomings in his care and treatment of Mrs A and both Dr G and Dr H also accept that a censure and fine are inevitable.

3.4.5 **THE** Tribunal has also taken into account Mr & Mrs A's advice to the Tribunal that they were not seeking punishment for either practitioner.

3.5 PUBLICATION:

3.5.1 **IN** its decision, the Tribunal indicated to counsel that, given that both respondent doctors are no longer practising obstetrics, it was minded to make orders that the names of the respondent doctors not be published. It invited counsel to address this aspect in their further submissions.

3.5.2 **SINCE** making its decision, the Tribunal's attention has been directed to the provisions of Section 138 of the Medical Practitioners Act 1995.

3.5.3 **SECTION** 138(2) provides:

"Where the Tribunal makes an order under this Act in respect of any medical practitioner, the Secretary shall cause a notice stating -

(a) The effect of the order; and

(b) The name of the medical practitioner in respect of whom the order is made; and

(c) A summary of the proceedings in which the order is made -

to be published in such publications as the Tribunal may order."

3.5.4 SECTION 138(4) provides that:

"Subsections (2) and (3) of this section shall apply subject to -

(a) Any order made under Section 106 of this Act; and

(b) Any order of any court."

3.5.5 SECTION 106 of the Act provides that hearings of the Tribunal are to be in public. Section 106(2)(d) is relevant. That section provides that subject to the matters set out in Section 106 (1) and (7) the Tribunal may make:

"(2) .....

(d) ..... an order prohibiting the publication of the name, or any particulars of the affairs, of any person.

.....

(7) Subsection (2) (d) of this section shall not apply to or in respect of -

(a) Any communication by or on behalf of the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994; or

(b) Any communication between any of the Health and Disability Commissioner, the Council, and the Tribunal; or

(c) The publication under section 138 of this Act, of the effect of any order."

3.5.6 **IN** response to the indication given by the Tribunal, counsel for the CAC has recorded *"some misgivings about the Tribunal's readiness to make such orders"* but, guided by the complainants, he chose not to make any submissions about non-publication, or otherwise, of the practitioners' names.

3.5.7 **COUNSEL** for the practitioners has made an application for an order prohibiting the publication of the names and any details which lead to the identification of any of the people involved in this matter.

3.5.8 **IT** is the Tribunal's view that pursuant to Section 106(2)(d) it may make an order prohibiting the publication of the names of the practitioners and any of the parties. The Tribunal accordingly makes such orders. In making the orders, the Tribunal has taken into account the following factors:

(1) That the events giving rise to this complaint occurred in 1990;

(2) That both practitioners, in particular Dr G, have been affected by the outcome of this delivery to the extent that both doctors no longer practise obstetrics; and

(3) That the complainants do not seek publication; and

(4) That it is in the public interest that an account of the events giving rise to this complaint and the outcome of this delivery, be published, rather than the identity of the practitioners involved; and

(5) The interests of the complainants, particularly the child, are not advanced in any way if the names of the practitioners were to be published.

3.5.9 **THE** Tribunal orders that the Secretary shall cause a notice stating -

(a) The effect of the order; and

(b) A summary of the proceedings in which the order is made -

to be published in the New Zealand Medical Journal and that any publication of the Tribunal's decision is not to include the names or any other details which might identify the practitioners or any other person.

3.6 **THESE** orders are made notwithstanding that the hearing of this complaint was conducted in public.

DATED at Auckland this 11th day of December 1997

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W N Brandon

Deputy Chairperson

Medical Practitioners Disciplinary Tribunal