



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

PO Box 11-649, Wellington • New Zealand
13th Floor, Mid City Tower • 139-143 Willis Street, Wellington
Telephone (04) 381 6816 • Fax (04) 802 4831
E-mail mpdt@mpdt.org.nz
Website www.mpdt.org.nz

DECISION NO: 217/02/95C

IN THE MATTER of the Medical Practitioners Act
1995

BETWEEN A COMPLAINTS ASSESSMENT
COMMITTEE

AND DR C a medical practitioner

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

Hearing held by telephone conference at 7 pm on Wednesday, 13 May 2009

TRIBUNAL: Miss S.M. Moran (Chair)
Dr R Fenwicke, Professor R Jones, Ms J Robson and Dr J Virtue
(Members)
Ms K L Davies (Legal Officer)

APPEARANCES: Counsel did not participate although Mr C Lange represents the
Complaints Assessment Committee (the CAC) and Mr H Waalkens
QC represents Dr C.

Introduction

1. On 15 March 2007 the Tribunal made the following orders:

“94. The Tribunal, pursuant to clauses 7(1)(b) and 7(3) of the First Schedule to the Medical Practitioners Act 1995:

- (a) Requires the CAC to produce to the Tribunal the documents which are in the possession of the CAC and which the Tribunal has inspected and examined as set out below.*
- (b) Requires the CAC to furnish copies of those documents to Dr C and his counsel.*
- (c) Limits the use of those documents for the purpose of the hearing of the charge against Dr C.*

95. Requires the complainant to produce for inspection and examination by the Tribunal the following documents which are in the possession of the complainant or under the complainant’s control and to allow copies of those documents to be made:

- (a) The complainant’s complete file and/or records held by xx Hospital (now xx Hospital) commencing in 1988.*
- (b) The complainant’s file and/or records held at xx Hospital in 1986.*
- (c) The complainant’s file and/or records held at the xx (now xx) in July 1986.*
- (d) The complainant’s current GP records only to the extent that they may have attached to them the complainant’s earlier records covering the period 1985 to 1989.”*

2. The CAC appealed the Tribunal’s decision to the District Court. On 6 and 9 November 2007 the District Court heard the appeal and on 4 February 2008 issued its reserved judgment. The District Court Judge dismissed the appeal on the ground that the District Court had no jurisdiction to hear the appeal. On 17 July 2008 the District Court Judge released his decision on issues as to costs making an award in

favour of Dr C.

3. On 5 September 2008 the CAC made application to the Tribunal:
 - 3.1. For the Tribunal to recall, amend, or reconsider its decision of 15 March 2007 relating to the disclosure of the complainant's medical records;
 - 3.2. Alternatively, to exercise its powers pursuant to clause 7 of the First Schedule to the Medical Practitioners Act to direct a third party to obtain the complainant's medical records.
4. On 29 September 2008 Dr C made application to the Tribunal for an order striking out and/or staying the disciplinary charge against him.
5. In its decision of 30 January 2009 the Tribunal declined Dr C's application for an order striking out and/or staying the disciplinary charge.
6. The Tribunal also declined the CAC's application. It ordered that certain documents not already made available either be made available or further enquiry be made regarding them. For the sake of clarity, paragraphs 177 to 191 of the Tribunal's decision of 30 January 2009 are reproduced here:
 177. *Mr Lange was asked directly whether the documents currently in the possession of the CAC which the complainant provided to it (and copies of which were given to Mr Waalkens at an earlier time but on limited conditions) would be made available at a substantive hearing without further objection.*
 178. *Mr Lange replied that if the Tribunal's ruling of 15 March 2007 were to stand then the CAC was bound to provide them and would do so.*
 179. *For the sake of clarity those documents are:*
 - (a) *A chronology of events provided by the complainant to the CAC*

which makes reference to some medical matters.

- (b) *An email dated 20 March 2002 from a counsellor at the xx to the complainant advising that the counsellor (whom it seems the complainant saw) left in 1988 to go overseas and who did not leave any records. The counsellor had made enquiries of the nurse (identified) who was still the nurse at the same place. The counsellor would talk with the nurse to see if she could check through the files when she had time to see if there were any medical notes and would let the complainant know.*
- (c) *A letter of 27 March 2002 from a Dr J who had located the complainant's notes between 1988 and 1989 when the complainant had consulted her then GP, Dr S, who had since retired. Accompanied with this letter were Dr S's notes between 5 July 1988 and 12 January 1989; and some 11 pages of notes from the complainant's clinical file at xx Hospital (now xx Hospital) between 25 July 1988 and 8 September 1988.*

- 180. *To that extent, the directions of the Tribunal at paragraph 94 of its 15 March 2007 decision ... will be complied with.*
- 181. *With regard to the Tribunal's directions relating to the complainant, Mr Lange stated the only reason the complainant had given him for not complying was that she did not want Dr C "going through" her personal medical records as they contained private matters.*
- 182. *However, the Tribunal's directions relating to the complainant are limited.*
- 183. *In paragraph 95(a) the Tribunal required only the complainant's complete file and/or records at xx Hospital commencing in 1988. Dr C has already seen some 11 pages of that file which contains matter of a personal nature. It is not known if the hospital any longer has the file or if there are any more documents on it than those already disclosed by the complainant to the CAC. In her correspondence with the CAC, the complainant had referred to them as a "section of medical records from xx Hospital" but on further enquiry from the CAC she stated they were the only ones in her possession. Whatever the state of the file, the enquiry needs to be made of the hospital and if there are further documents on it, they need to be disclosed.*
- 184. *With regard to the directions in paragraph 95(b), there is no reason why the enquiry of xx Hospital cannot be made and any file, if in existence, can be made available.*
- 185. *With regard to the directions in paragraph 95(c), this matter can be readily followed up with xx (formerly xx) to ascertain the outcome of the counsellor's enquiries.*
- 186. *With regard to the directions in paragraph 95(d), at this hearing Mr Lange produced a letter dated 27 April 2007 from the complainant's current medical general practitioner that she (the GP) did not hold any records for*

the complainant for the period requested, that is, between 1985 and 1989 (1989 being the year the complainant moved overseas). To the extent required, this direction has been complied with.

- 187. *Mr Lange was also asked directly if the complainant would attend a substantive hearing, if the proceedings were not struck out or stayed.*
- 188. *Mr Lange said the only time the complainant had indicated she would not attend a hearing was around the time of the settlement agreement. He referred to correspondence.*
- 189. *The Tribunal notes a letter dated 27 February 2004 (attached to Ms Garvey's affidavit) from Mr Lange to the complainant in which he has recorded:*

"While it is recognised that your preference would have been to have the charges withdrawn and the settlement proceed, you have indicated that you will give evidence if required at the disciplinary tribunal."

- 190. *Mr Lange said the CAC would issue summonses to the complainant and other witnesses for the CAC to attend.*
- 191. *It was evident from Mr Lange's exchange with the Tribunal that, if the proceeding were not stayed, he would do all he could to ensure compliance and would give early notice to the defence and to the Tribunal if there were indications of non-compliance."*

- 7. On 16 April 2009 the Tribunal received from Mr Lange on behalf of the CAC, a letter dated 9 April 2009 enclosing and observing the following:

- 7.1. A copy of the records which the complainant had received from the xx District Health Board and which were supplied pursuant to the earlier direction made by the Tribunal. Mr Lange stated it was appropriate to record that the CAC's and the complainant's position was reserved in respect of the Tribunal's direction and that while not intending any disrespect to the Tribunal, it was his view that the correctness of the Tribunal's decision in law remained at issue and also noted there was no right of appeal from that decision at this point in time.

- 7.2. The records provided were xx District Health Board records and were being provided pursuant to paragraphs [94] and [95] of the Tribunal's decision of 15 March 2007 for inspection and examination by the Tribunal.
- 7.3. Mr Lange confirmed his earlier correspondence that the CAC had had confirmation from both the xx District Health Board and the xx that they had been unable to locate any records in the name of the complainant (referring to paragraphs 95(b) and 95(c) of the Tribunal's decision of 15 March 2007).

Discussion and Decision

8. At the time the present hearing was convened the members of the Tribunal had each been supplied with copies of the records of the xx District Health Board forwarded under Mr Lange's letter of 9 April 2009.
9. There were twenty seven pages of records from the Board's Mental Health Service relating to the complainant, comprising both typewritten and handwritten material. A substantial amount of the content was repetitive. It was not clear if they were a complete record but they referred to a period between July and September 1988.
10. Having examined the material, all members of the Tribunal were unanimous in their view that the content of the records were relevant for the purposes of dealing with the matter before the Tribunal and are therefore admissible.

Conclusion and orders

11. The Tribunal orders that copies of the records of the xx District Health Board be made available to Dr C and his legal counsel.
12. The use to which the copies of these documents can be put is strictly limited for the purposes of the proceedings before this Tribunal and the hearing of the charge.
13. The charge should be set down for hearing without further delay.

DATED at Wellington this 20th day of May 2009

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Miss S M Moran

Chair

Medical Practitioners Disciplinary Tribunal