MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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PUBLICATION OF THE NAME OF THE COMPLAINANT OR ANY DETAILS WHICH MAY IDENTIFY HER IS PROHIBITED	**DECISION NO:**	284/03/113C
	IN THE MATTER	of the Medical Practitioners Act 1995
		-AND-
	IN THE MATTER	of a charge laid by the Complaints Assessment Committee pursuant to Section 93(1)(b) of the Act against **RICHARD WARWICK GORRINGE** medical practitioner of Hamilton

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Ms P Kapua (Chair)

Dr I D S Civil, Ms S Cole, Dr R J Fenwicke, Dr M G Laney (Members)

Ms G J Fraser (Secretary)

Mrs G Rogers (Stenographer)

Hearing held at Hamilton on Monday 15, Tuesday 16, Wednesday 17 and Thursday 18 December 2003

APPEARANCES: Ms K G Davenport for the Complaints Assessment Committee ("the CAC")

Mr A H Waalkens for Dr R W Gorringe.

The Charge

1. A CAC, acting pursuant to Section 93 of the Medical Practitioners Act ("the Act") charges that Richard Warwick Gorringe, medical practitioner of Hamilton, from mid 1994 to mid 1997 in his clinical management of Mr Smith (now deceased), acted in a way that amounted to professional misconduct in that Mr Gorringe:

   (1) Reached his various diagnoses of Mr Smith's ongoing complaints, in the absence of any acceptable medical diagnostic proof;

   (2) He failed to consider other diagnoses and continued his treatments of Mr Smith long after it was clear that no significant improvement had taken place and that serious bowel symptoms were still present;

   (3) That he failed to effectively consider and act on such consideration, that the symptoms presented by Mr Smith could be related to something other than an infection (bacterial or parasitic);

   (4) He failed to arrange appropriate investigations including faecal testing in the presence of ongoing symptoms;

   (5) He failed over a long period of time to arrange for Mr Smith to have a colonoscopy or reference to an appropriate specialist to investigate his continuing rectal bleeding and bowel symptoms.

2. Mr Gorringe denied the charge.

Factual Background

3. Mr Gorringe graduated in 1977 and worked in general medical practice in Cambridge, Auckland and Tauranga. He also worked overseas and upon his return to New Zealand in 1989 he worked as a locum in various New Zealand medical practices.

4. In 1990 Mr Gorringe commenced full-time practice offering traditional as well as complementary medicine practices to patients.

5. Mr Smith first saw Mr Gorringe on 16 March 1994. At that consultation Mr Gorringe recorded two years of "belly pain" "bloating" and "not feeling well and affected by heat"[1].

6. There was also reference to Dr Young who was Mr Smith's general practitioner from the Hillcrest Medical Centre.

7. Mr Smith had been diagnosed with giardia by his GP and it was Mr Gorringe's opinion that he had classic chronic giardia infection. Mr Gorringe prescribed Tiberal and Enpac for the giardia. Mr Gorringe also concluded that Mr Smith had a sensitivity to sunlight and that was recorded in his notes as well.

8. Mr Smith's next appointment with Mr Gorringe was on 15 April 1994 at which time Mr Gorringe recorded an improvement.[2] As a result of that improvement Mr Gorringe proceeded to use a homeopathic giardia detoxification programme for the next two months.

9. Although it was noted in the file that Mr Gorringe would see him again on 30 June 1994, Mr Smith presented on 6 May 1994 with some CoQ10 enzymes which he

[1] Bundle of Documents, p1
[2] Bundle of Documents, p1

wished to use and which he checked with Mr Gorringe to ensure that they were compatible with his giardia homeopathic course.

10. On 16 May 1994 Mr Smith presented, this time reporting blood in his bowel motion. Mr Gorringe's notes record that the bleeding had begun four days earlier in conjunction with gurgling and flatus. A physical examination detected tenderness in the abdomen.[3]

11. Mr Smith had a barium enema on 6 July 1994 which was normal and saw Mr Gorringe on 11 July 1994. As had been his practice Mr Gorringe also performed Bi-Digital O-Ring Testing ("BDORT") on Mr Smith. Mr Gorringe described this complementary medicine technique as

> *"a non-conventional bio-energetic test method which has been developed from older forms of muscle testing."*[4]

12. Mr Gorringe saw Mr Smith again on 15 August 1994 and there is reference to *"blood back in bowel motions"*[5]. At this consultation Mr Gorringe undertook BDORT and diagnosed salmonella infection and prescribed Rulide.

13. On 29 August 1994 Mr Smith again saw Mr Gorringe and reported less blood and no bloating.

14. On 14 October 1994 Mr Smith returned with an increase in bowel sounds, some decrease in appetite, an increase in non-smelly bowel wind and a touch of blood in his bowel motions. Following BDORT Mr Gorringe diagnosed campylobacter and again prescribed Rulide.

15. Following blood tests on 18 November 1994 Mr Gorringe saw Mr Smith on 21 November 1994 where he recorded a large decrease in bowel sounds and wind and only feeling unwell on the odd day.

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[3] Bundle of Documents, p2
[4] Brief of Evidence of R W Gorringe, para 31
[5] Bundle of Documents, p2

16. There was another appointment approximately three weeks later where it was noted that Mr Smith had had intermittent blood in the last part of his bowel motions in the last two to three days.

17. On 8 March 1995 it was noted that there was still some blood in Mr Smith's bowel motion. He attended on 22 March 1995 where there was still a little blood and following BDORT on both occasions Mr Smith was diagnosed as having a blood fluke.

18. On 5 April 1995 it was noted that Mr Smith's belly was *"picking up a good deal"*[6] and that his energy level was up. It was also noted that the blood had almost fully stopped and there was reference to an injury to his arm after he had slipped getting out of his truck. BDORT was again undertaken and this time there was a positive test for parasite toxins. In this consultation there is a notation *"Proctoscope"* and *"?Ba Enema"*.

19. The next appointment was on 2 May 1995 where it was recorded that there was no bloating and that the bleeding had stopped with an increase in gurgling, particularly at night.

20. The next appointment was on 30 May 1995 where it was recorded that Mr Smith had a touch of inflammatory bleeding which had then stopped.

21. He was seen in July 1995 where he reported that there was still a touch of blood loss from the bowel. There is a reference in the notes to the fact that a barium enema had been done a year earlier.

22. On 21 August 1995 Mr Smith reports that he is feeling extremely well and there is no reference to bleeding. Following BDORT Mr Gorringe assessed him as having Rotovirus 87 which was treated homeopathically.

23. On 2 October 1995 Mr Smith returned to see Mr Gorringe after having felt awful for a number of days. It was recorded that there was no belly ache and that his bowel motions were good.

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[6] Bundle of Documents, p5

24. On 27 November 1995 blood tests were done and there was an appointment on 28 November 1995 where it was noted that Mr Smith had no symptoms and these are noted as *"nil all"*.

25. Mr Smith's next appointment was on 12 March 1996 where he reported a three week history of loose bowel motions and pain and decreased energy. Following BDORT Mr Gorringe assessed him as having an amoebic infection which was treated homoeopathically.

26. On 9 April 1996 Mr Smith returned still with loose bowel motions and decreased energy. There is a note for bloods in three weeks although these were not done.

27. Mr Smith's next appointment was on 30 July 1996 where he reports having been somewhat gurgly in the bowel plus having had a chest problem described as a touch of the flu. Following BDORT testing Mr Gorringe assessed he had been poisoned with a farm chemical, Applaud, and gave him some homeopathic remedy for that. Around this time Dr Stephen French took over Dr Young's practice at the Hillcrest Medical Centre.

28. On 5 November 1996 Mr Smith reported that he had been feeling a bit lousy for a while but had come right and had in the meantime done the blood tests. At this appointment Mr Gorringe recorded Mr Smith's pulse and standing and sitting blood pressure. In his notes Mr Gorringe records in reference to the blood pressure readings:

> *"Steph to repeat one morning"*[7]

29. On 7 January 1997 Mr Smith was recorded as having reported that he was feeling *"very good after B12"*. He had, however, been sick before Christmas and had had a decrease in energy which he reported felt like toxins. He also reported that he had a little nausea after food. There was a query as to whether he had giardia back again. Mr Gorringe considered that he had probably overcome the giardia which was present after BDORT but as he could not exclude cysts he opted to treat with Tiberol antibiotic as well as some giardia homeopathic remedies.

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[7] Bundle of Documents, p9

30. On 25 March 1997 Mr Smith complained of a bug in the bowel and that he was tired, bloated and had intermittent blood in his faeces. There is reference in the notes to the barium enema done in July 1994 and following BDORT, Mr Gorringe concluded a finding of heliobactor for which he prescribed a two month treatment of DeNol.

31. Mr Smith returned on 25 May 1997 at which time he reported that he had been going well until seven days earlier but that he had low bowel pain, fatigue and his bowel motions were a light colour with still a little blood. Mr Gorringe chose to continue treating him with DeNol and herbs.

32. On 6 June 1997 Mr Smith reported small intestine pain, burning, sore muscle and hips, and that he was feeling awful and felt like he wanted to sweat. The notes record the word *"toxic"*. BDORT was undertaken and the treatment prescribed was to continue vitamin C and homeopathic drainage remedy.

33. Towards the end of that month Mr Gorringe again saw Mr Smith who reported that he felt a little better and that he felt he was getting rid of the toxins. He still had a low belly ache at the top of his pelvis but had a lot more energy. There is reference to intermittent bowel bleeding. The notes then state *"if still any B/bleeding 6/52 then proctoscope rectal b.enema"*.

    Reference is also made in that note to the barium enema last done two and a half years earlier.

34. He last saw Mr Gorringe on 19 July 1997 where he questioned whether he had a bowel bug and after BDORT Mr Gorringe prescribed an anti-biotic, Klacid.

35. Around this time Mr Smith went to see Dr French at the Hillcrest Medical Centre who referred him to Dr Whittle for a colonoscopy.

36. During this period, Mr Gorringe arranged for blood tests to be done on 5 occasions (18 November 1994, 7 March 1995, 8 September 1995, 27 November 1995 and 5 November 1996). He arranged one barium enema on 5 July 1994 and one faecal test on 18 August 1994.

37. On 20 August 1997 Mr Smith had a colonoscopy examination which found a small polyp in the ascending colon and a moderate sized adenocarcinoma at the rectosigmoid junction. Biopsies were taken.[8]

38. On 25 August 1997 Mr Smith was advised by Dr Whittle that he had found a tumour at 15cm and the histology confirmed *"this is a well differentiated adenocar[c]inoma of the colon."*[9] Arrangements were made for an anterior resection of the rectum.

39. On 18 September 1997 Mr Smith had an anterior resection ileostomy and liver biopsy. He was in hospital from 17 September until 25 September 1997.

40. The liver biopsy showed:

> *"METASTATIC POORLY DIFFERENTIATED (COLONIC) ADENOCARCINOMA"*[10]

and the anterior resection diagnosis was:

> *"POORLY DIFFERENTIATED ADENOCARCINOMA SIGMOID COLON: WIDELY INFILTRATING PERICOLIC TISSUES AND METASTATIC TO LIVER AND REGIONAL LYMPH NODES."*[11]

41. Mr Smith was admitted after presenting at the Accident and Emergency Department of Waikato Hospital on 27 September 1997 and was discharged on 3 October 1997. The issues surrounding chemotherapy were explained to him and he opted not to undertake chemotherapy[12] and was referred to palliative care.

42. On 30 October 1997, Mr Smith was again admitted to hospital after presenting to the Accident and Emergency Department and was discharged on 5 November 1997. From 12 November 1997, he was under the palliative care department to manage his symptoms but was admitted to hospital again on 23 January 1998 until 29 January 1998 in order to better manage those symptoms.

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[8] Bundle of Documents, p34
[9] Bundle of Documents, p96
[10] Bundle of Documents, p219
[11] Bundle of Documents, p220
[12] Bundle of Documents, p104

43. Mr Smith's xx forwarded a complaint to the Health Consumer Trust about her xx's treatment by Mr Gorringe in October 1997. Mr Gorringe discussed it with Mr Smith some time early in 1998 and was satisfied with Mr Gorringe's assurances that he would manage "odd bowels" differently in the future.[13]

44. Mr Smith died on 5 April 1998.

45. Mr Smith's xx then made a complaint to the Health and Disability Commissioner dated 6 September 2002.

Evidence for the CAC

46. The CAC made the point strongly that the charge before this Tribunal related only to Mr Gorringe's management of Mr Smith as a registered medical practitioner and was not a case about alternative medicine practices.

47. It was the CAC's case that Mr Gorringe's treatment and care of Mr Smith fell well short of the standard required of a registered medical practitioner. It was the CAC's case that Mr Gorringe was under an obligation to Mr Smith and was responsible for managing the complaints that Mr Smith brought to him.

48. The first witness for the CAC was Mrs A who was Mr Smith's xx. Mrs A described her xx as a tree feller by occupation and that he was a big man of almost six feet tall, very strong who considered himself fit. She was aware that he had had some stomach pain, bloating and some bleeding and that was the reason for him seeing Mr Gorringe. It was her understanding that for the first year of seeing Mr Gorringe her xx was treated for giardia but she was aware that they were later told that he had a blood fluke, salmonella and other infections. Mrs A urged him to get a second opinion and by the middle of 1997 she suspected that he had cancer. Mrs A stated:

> *"Despite our urging that he get a second opinion, [Mr Smith] had great faith in Dr Gorringe and truly believed that what he was telling him was correct. Finally, [Mr Smith] went to see Dr French who immediately sent him for a colonoscopy and then for an operation to remove the tumour."*[14]

[13] Transcript, p90, lines 4-10
[14] Exhibit 3, para 6

49. Mrs A had made an initial complaint about her xx's treatment to the Health Consumer Trust in October 1997 which resulted in an advocate discussing the matter with Mr Smith and Mr Gorringe. Mrs A had not received a response to that complaint and in 2002 she complained to the Health and Disability Commissioner.

50. The next witness was Jocelyn Anne Cooper who was a friend of Mr Smith's and who had contact with him from 1996 to 1997. She was aware that Mr Smith was seeing Dr Gorringe and her evidence was that when Mr Smith had asked whether he had cancer, Mr Gorringe had told him that it definitely was not cancer. However, under cross-examination Mrs Cooper accepted that that statement was made in relation to the colour therapist.

51. Dr Stephen John French then gave evidence. He has been in practice as a general practitioner since 1996 at the Hillcrest Medical Centre at Hamilton. Dr French was unable to produce any medical records as they had been destroyed in a fire at the medical centre in February 2002. Records of tests were obtained from Med Lab and some notes from Dr Whittle who had undertaken the colonoscopy and ensuing surgery. Those tests showed that Dr Young had ordered blood and faecal tests in March 1994 (prior to Mr Smith going to Mr Gorringe) and Dr French arranged a number of blood and faecal tests from July 1997.

52. Dr French recalled seeing Mr Smith around July/August 1996 and that Mr Smith had told him that he had been seeing Dr Gorringe and that he had had several treatments for resistant giardia over that time. Dr French stated that he had raised the issue of bowel cancer with Mr Smith and that he had suggested a colonoscopy but Mr Smith had felt he was unable to afford a colonoscopy. He therefore gave Mr Smith a form for a barium enema but Mr Smith did not have that done. It was Dr French's evidence that he considered that Mr Smith saw him to get a second opinion and as part of that he gave him a form for the barium enema.[15]

53. The final witness for the CAC was Dr Jonathan Edward Mark Fox, a medical practitioner from Auckland, who reviewed Dr Gorringe's treatment and notes in

[15] Transcript, p27, lines 7-10

respect of Mr Smith. Dr Fox had some difficulty with some of the notations in Mr Gorringe's notes, as they related to alternative treatment.

54. It was Dr Fox's evidence that the diagnoses that Dr Gorringe had made in respect of Mr Smith's symptoms lacked a diagnostic basis and that Dr Gorringe failed to diagnose bowel cancer or to investigate it appropriately over a three year period given the symptoms that Mr Smith was presenting to him.

55. In particular, Dr Fox was concerned at the apparent use of a barium enema as a definitive diagnostic tool in the case of bleeding. The fact that the July 1994 barium enema was clear should not, in Dr Fox's view, have provided reassurance while Mr Smith still presented with rectal bleeding symptoms. In Dr Fox's opinion, Dr Gorringe's treatment of Mr Smith fell well below that expected of a reasonably competent general medical practitioner.

Evidence for Mr Gorringe

56. It was Mr Gorringe's position that he was at all times endeavouring to do his very best for Mr Smith and that he is, in essence, practising alternative medicine that is complemented by more conventional medical techniques. It was Mr Gorringe's position that he was at no time Mr Smith's general practitioner and that he considered that that role was being fulfilled by the Hillcrest Medical Centre.

57. Mr Gorringe gave evidence concerning his consultations with Mr Smith and took the Tribunal through his notes and explained the various diagnoses he made in his treatment of Mr Smith.

58. It was Mr Gorringe's evidence that colonoscopy does not appear in the notes as Mr Smith was not amenable to that course of action. The barium enema was a reluctant second choice and followed a recommendation by Mr Gorringe that Mr Smith have a colonoscopy. There was no explanation as to why there is no record in the notes that a colonoscopy was recommended and declined by Mr Smith.

59. Mr Gorringe was also cross-examined on the issue of his response in respect of a complaint lodged with the Health Consumer Trust in respect of his treatment of Mr Smith and in that letter, Mr Gorringe wrote:

> *"The policy of this practice as at 25/10/97 with bowel infection associated with bleeding is to do a barium enema as a first major investigation. If this is normal and other episodes of bowel infection occur with bleeding this practice will then proceed to colonoscopy even if an infective cause of bleeding is present."*[16]

60. While Mr Gorringe did not himself assert that his responsibility was diminished in a co-management situation he did assert that his was not the primary responsibility. He did not regard himself as Mr Smith's general practitioner and considered that his role was more in his offering of alternative or complementary practices to conventional medical practice. He did however, accept that he was responsible for the management of Mr Smith's care and the symptoms that Mr Smith shared with Mr Gorringe.[17]

Standard of Proof

61. The onus of proof is on the CAC to establish the charge in this case and that requires the charge to be proved on the balance of probabilities.

62. The requisite standard of proof in medical disciplinary cases was considered by Jeffries J in *Ongley v Medical Council of New Zealand*[18] where the High Court adopted the following passage from the judgment in *re Evatt: ex parte New South Wales Bar Association*[19]:

[16] Transcript, p146, lines 2-6; Exhibit 14
[17] Transcript , p97, lines 13-15
[18] (1984) 4 NZAR 369
[19] (1967) 1 NSWLR 609

> *"The onus of proof is upon the Association but is according to the civil onus. Hence proof in these proceedings of misconduct has only to be made upon a balance of probabilities; Rejfek v McElroy[20]. Reference in the authorities to the clarity of the proof required where so serious a matter as the misconduct (as here alleged) of a member of the Bar is to be found is in acknowledgement that the degree of satisfaction for which the civil standard of proof calls may vary according to the gravity of the fact to be proved."*

63. That position has been followed in *Gurusinghe v Medical Council of New Zealand*[21]*; M v Medical Council of New Zealand (No. 2)*[22]*; and Cullen v Medical Council of New Zealand*[23].

Professional Misconduct

64. Jeffries J in *Ongley v Medical Council of New Zealand*[24] formulated a test for defining professional misconduct as:

> *"Has the practitioner so behaved in a professional capacity that the established acts under scrutiny would be reasonably regarded by his colleagues as constituting professional misconduct?... the test is objective and seeks to gauge the given conduct by measurement against the judgment of professional brethren of acknowledged good repute and competency, bearing in mind the position of the Tribunal which examines the conduct."*

65. In *B v The Medical Council*[25] (in the context of a charge of conduct unbecoming), Elias J (as she then was) stated:

> *"In the case of diagnosis or treatment, conduct which falls short of the mark will be assessed substantially by reference to usual practice of comparable practitioners…those standards to be met are, as already indicated, a question of degree; … I accept that the burden of proof is on the balance of probability. Assessment of the probabilities rightly takes into account the significance of imposition of disciplinary sanctions. I accept that the Court must be satisfied on the balance of probabilities that the conduct of the practitioner is deserving of discipline."*

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[20] [1966] ALR 270
[21] [1989] 1 NZLR 139 at 163
[22] Unreported HC Wellington M239/87 11 October 1990
[23] Unreported HC Auckland 68/95 20 March 1996
[24] supra 18
[25] Unreported HC Auckland HC11/96 8 July 1996

66. The applicable principles to be taken from these statements are:

(i) A finding of professional misconduct is not required in every case where a mistake is made or an error proven.

(ii) The question is not whether an error was made, but whether the practitioner's conduct was an acceptable discharge of his or her professional obligations (in all the circumstances of the particular case).

(iii) The departure from acceptable standards and/or the failure to fulfil professional obligations must be significant enough to attract sanction for the purposes of protecting the public.

67. The issue is essentially whether the conduct of Mr Gorringe is culpable, that is, whether it is conduct deserving of discipline.

Decision

68. The Tribunal has considered the submissions and the evidence brought on behalf of the CAC and Mr Gorringe. The Tribunal is not concerned with the alternative and complementary practices that Mr Gorringe undertook but rather with his management and treatment of Mr Smith as a registered medical practitioner in respect of the symptoms he presented with.

69. The Tribunal is of the view that whether Mr Gorringe considers himself Mr Smith's general practitioner or not is irrelevant. Mr Gorringe acknowledges that he was primarily responsible for Mr Smith in respect of the symptoms that he presented with and while the absence of records from Hillcrest Medical Centre leaves some questions unanswered, it is clear that Mr Smith was seen by Mr Gorringe on a regular basis from 1994 until 1997.[26]

70. The symptoms that Mr Smith presented with were related to stomach pain, bloating, flatulence and blood in his bowel motions. Throughout the period that he was seen by Mr Gorringe those symptoms remained in some form or another.

[26] see paras 5-34 above

71. It is clear from his notes that Mr Gorringe was treating Mr Smith in respect of conventional medical practice, albeit that treatment did not include a colonoscopy. While it was Mr Gorringe's response that he only wrote in the notes what had been positively agreed with his patient[27] it is clear that there was only one barium enema done and that was in July 1994.

72. During the three years that Mr Gorringe was treating Mr Smith he diagnosed 10 different conditions, one of those being giardia which he diagnosed twice. He diagnosed salmonella, campylobactor, heliobactor, bowel bug, blood fluke, Tordon poisioning, amoebic infection, colitis, and irritable bowel. The Tribunal is concerned that even these diagnoses were done in the absence of any proper diagnostic testing. There were tests available that Dr Fox referred to in respect of these conditions and Mr Gorringe did not avail himself of those further blood, faecal and breath tests and jejunal biopsy which all would have assisted in his diagnoses.

73. The Tribunal does not accept that this was a co-management situation. Mr Gorringe was the primary person responsible for Mr Smith during this time and the attempts to interpret his notes to indicate references to doctors at the Hillcrest Medical Centre were not credible. In particular, the notation:

> *"Steph to repeat one morning"*

in respect of blood pressure[28] was interpreted by Mr Gorringe in his transcribing of his medical notes[29] as:

> *"Steven French to repeat one morning"*

74. In questions from the Tribunal Mr Gorringe acknowledged that he had a practice nurse in 1996 whose name was Stephanie Young. He did not, however, accept that the reference to *"Steph"* would have been directed to his practice nurse rather than Stephen French.

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[27] Transcript, p204-205, lines 20-22
[28] Bundle of Documents, p9
[29] Exhibit 6

75. The Tribunal is of the view that it is most likely that he would have had these tests repeated by his practice nurse and that the reference is to her and not to Stephen French. This indicates Mr Gorringe's role in respect of the treatment of Mr Smith was very much in the nature of being his primary provider or his general practitioner. It is also to be noted that there is no record from Med Lab of blood or faecal tests being ordered by any doctor other than Mr Gorringe from 16 March 1994 to June 1997.

76. There was also nothing in the notes to indicate that this was akin to a referral situation. There was one reference only to Dr Young at the time of Mr Smith's first appointment. It was also agreed by Mr Gorringe that he had no communication with the Hillcrest Medical Centre.

77. Further, in relation to the notes, there is no indication at all that colonoscopy was at any stage recommended by Mr Gorringe. His response to the Health Consumer Trust set out in Exhibit 14 and referred to in paragraph 59 of this decision confirms Mr Gorringe's basis for dealing with such matters.

78. It is clear that Mr Smith had faith in Mr Gorringe and it is also clear that when he was faced with some urgency and perhaps some encouragement from family and friends he had a colonoscopy. Given his faith in Mr Gorringe, it is difficult to understand why Mr Smith would not have had a colonoscopy if it had in fact been urged on him by Mr Gorringe.

79. Therefore, in respect of the particulars, the Tribunal finds:

Particular 1

That he reached his various diagnoses of Mr Smith's ongoing complaints, in the absence of any acceptable medical diagnostic proof;

The Tribunal is satisfied that there were available acceptable medical diagnostic tests for all of the diagnoses made by Mr Gorringe over the three year period but that he did not avail himself of those diagnostic tools.

The Tribunal accepts the evidence of Dr Fox who has set out the blood, breath, faecal and biopsy tests that were available in respect of all of the diagnoses made by Mr Gorringe and notes that, in most instances, Mr Gorringe's diagnoses were done by BDORT alone.

Particular 2

That he failed to consider other diagnoses and continued his treatments of Mr Smith long after it was clear that no significant improvement had taken place and that serious bowel symptoms were still present;

It is not clear whether Mr Gorringe did in fact consider other diagnoses particularly as there is a reference to a notation for cancer on 22 March 1995. The negative notation in relation to cancer followed a BDORT which Mr Gorringe accepts is not a serious test that should replace traditional testing.[30]

Particular 3

That he failed to effectively consider and act on such considerations; that the symptoms presented by Mr Smith could be related to something other than an infection (bacterial or parasitic);

The Tribunal is satisfied that Mr Gorringe did fail to **effectively** consider and act on the other considerations and continued on a path aimed at treating a number of infections without undertaking appropriate testing and despite the recurrence of the symptoms.

Particular 4

He failed to arrange appropriate investigations including faecal testing in the presence of ongoing symptoms;

The Tribunal is satisfied that this was a failure on Mr Gorringe's part and that merely filling out a form in 1994 and noting that it was not carried out in a timely manner

[30] Transcript, p199-200, lines 23-2

was not a responsible action on the part of a medical practitioner. It was Mr Gorringe's position that the samples had not been obtained properly and it was therefore Mr Smith's responsibility. However, the Tribunal is of the view that it was Mr Gorringe's responsibility to follow-up and ensure that proper faecal testing was undertaken particularly given Mr Smith's symptoms.

Particular 5

He failed over a long period of time to arrange for Mr Smith to have a colonoscopy or reference to an appropriate specialist to investigate his continuing rectal bleeding and bowel symptoms.

In respect of this particular, the Tribunal is satisfied that this was a failure on the part of Mr Gorringe. The Tribunal does not accept that Mr Gorringe was recommending colonoscopy and that Mr Smith was refusing to follow that recommendation. If that were the case, a prudent medical practitioner would have noted that in the notes, but by his own evidence he acknowledged that it was his practice to undertake barium enema as a first major investigation[31] (even though it was accepted that it did not cover the whole of the bowel). The Tribunal also accepts the faith that Mr Smith put in Mr Gorringe and the evidence of Mrs A and Mrs Cooper support that faith and that despite their urging, he continued to have faith in the treatment by Mr Gorringe. Mr Gorringe's assertions that Mr Smith was in some way responsible for the situation are misguided and somewhat self-serving and are rejected by the Tribunal.

Given his agreement to a colonoscopy in 1997 which resulted in his cancer diagnosis, it is difficult for the Tribunal to understand why he would not have agreed to a colonoscopy earlier if Mr Gorringe had insisted on it. The evidence indicates that colonoscopy was not a consideration in Mr Gorringe's management and treatment of Mr Smith.

The Tribunal considers that the treatment and management of Mr Smith by Mr Gorringe ignored basic symptoms that should have made him suspicious and encouraged him to undertake objective testing particularly in respect of bowel cancer. While Mr Gorringe proceeded down a path of diagnosing giardia, infectious diseases

[31] Exhibit 14

and chemical poisoning, he ignored consistent symptoms that many lay people would be suspicious of.

It is of grave concern that a diagnosis of bowel cancer was ruled out on the basis of a clear barium enema in 1994.

80. It is clear to the Tribunal that Mr Gorringe's attention was on a number of other rather unusual diagnoses and his treatment for all of those diagnoses did little to alleviate the symptoms Mr Smith had originally presented to him with.

81. What is of concern was that by the time Mr Smith underwent a colonoscopy his condition had deteriorated so badly that there was little that could be done to save his life.

82. The Tribunal considers that the matters in Particulars 1, 3, 4 and 5 of the charge, having been satisfied, amount to professional misconduct.

83. In relation to penalty, counsel for the CAC is to lodge submissions as to penalty no later than 14 days after receipt of this decision.

84. Submissions on behalf of Mr Gorringe are to be lodged no later than 14 days thereafter.

DATED at Auckland this 10th day of May 2004

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P Kapua

Deputy Chair

Medical Practitioners Disciplinary Tribunal