



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO: 264/03/114C

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 **CHRISTIE**
ARIANESAN PHILIPAH
former medical practitioner of
Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Ms P Kapua (Chair)
Dr L Ding, Dr R J Fenwicke, Dr R W Jones, Mrs H White
(Members)
Ms K L Davies (Hearing Officer)
Ms J Kennedy (Stenographer)

Hearing held at Auckland on Tuesday 4 November 2003

APPEARANCES: Mr M Woolford for the Complaints Assessment Committee ("the CAC")

Mr C C McKay for Mr C A Philipiah.

Introduction

1. A CAC has charged that Mr Philipiah, a former medical practitioner, has been convicted of a number of offences by the District Court, being offences punishable by imprisonment for a term of three months or longer and the circumstances of those offences adversely reflects on Mr Philipiah's fitness to practise medicine. The charge is set out in full below.
2. At the conclusion of the hearing, the Tribunal delivered its decision in respect of the charge and penalties. The decision in full is set out below.

The Charge

3. A CAC has charged that Mr Philipiah was on the 29th October 2002 convicted by the District Court at Auckland of the following offences, each being an offence punishable by imprisonment for a term of three months or longer;

- (1) Take/obtain/uses documents for pecuniary advantage [x28] Crimes Act 1961 section 229A;
- (2) Obstruct/pervert/defeat course of justice [x6] Crimes Act 1961 sections 115, 116, 117;

In the circumstances the CAC charges that the offences reflect adversely on the practitioner's fitness to practise medicine.

Background

4. At the end of a three week trial before a judge and jury in the Auckland District Court, Mr Philipiah was found guilty on 21 March 2002 of 28 charges of fraudulently using General Medical Services (“GMS”) claim schedules for the purpose of obtaining for himself a pecuniary advantage and three charges of wilfully attempting to obstruct the course of justice by writing false entries in a patient’s clinical record and by requesting a women’s refuge worker and a patient to sign letters which contained statements he knew to be incorrect.
5. Mr Philipiah was originally committed for trial on 107 separate charges but following the decision of the Court of Appeal in *R v Tuckerman* ((CA) 280/86 31 October 1986), a lesser number of charges were selected to proceed to trial.
6. On 29 October 2002 Mr Philipiah was sentenced to two years and three months imprisonment in respect of the 28 counts of fraudulently using GMS claim schedules and nine months imprisonment in respect of the charges relating to attempts to obstruct the course of justice, the terms being cumulative thus making a total of three years imprisonment. Mr Philipiah is currently under home detention.

The CAC’s Position

7. Mr Woolford outlined the background to the charges and emphasised the fact that Mr Philipiah had been committed for trial on 107 separate charges but those charges were restricted in number because of the *Tuckerman* decision. Mr Woolford did however, make the point that the further charges of attempting to pervert the course of justice arose because of actions taken by Mr Philipiah after he became aware of the investigation relating to the fraud charges.
8. The particular fraud charges that were the subject of Mr Philipiah’s conviction related to 53 different patients and involved 251 separate GMS claims.
9. A civil claim was brought by the Ministry of Health on behalf of Health Benefits Limited in respect of further claims. The District Court judge dealing with the criminal charges made a clear suggestion that there was merit in looking at a settlement of those claims given the high cost to both Mr Philipiah and the Ministry

of Health, in pursuing this matter through the courts. That action was settled by payment from Mr Philipiah to the Ministry of Health of \$650,000.00. It is clear, and it was not disputed, that the charges that gave rise to Mr Philipiah's convictions were representative of a pattern of behaviour that took place over a long period of time.

10. The agreement reached in respect of the civil claim recorded that the payment was in settlement of “ *...inappropriate invalid GMS claims made by Dr Philipiah during the period 1 July 1994 to 30 June 2000.*” As part of that same agreement, Mr Philipiah undertook not to renew his medical practising certificate in the future.
11. The investigation that gave rise to the convictions came about as a response to a substantial volume of claims made by Mr Philipiah. An analysis of those claims indicated a large number of after hours visits, purportedly visiting up to 24 patients a night at the same address. Further investigation showed that one address commonly cited by Mr Philipiah was that of a women's refuge in Avondale. A surveillance operation was undertaken and on a number of dates Mr Philipiah did not either arrive at the address or, if he arrived, went up to the gate, found it to be locked then turned around and returned to his car. On each of these occasions he claimed to have seen either nine or 13 patients. A number of other charges related to claims made when patients were overseas or out of Auckland.
12. Following the surveillance, an audit was done of his surgery and in order to support the claims he had made, patient records were found to have been fabricated. During the audit some records were thought to be missing and in response Mr Philipiah re-created the records which resulted in duplicate records. Many of the patients involved in the charges upon which Mr Philipiah was convicted, were Pacific Island or Asian immigrants and their families. It is also relevant that from the time that he was charged with the offences Mr Philipiah sought to obtain the support of the patients he had claimed for and asked them to sign statements that were not correct.
13. Mr Woolford emphasised the seriousness of the charges relating to the patients records and pointed to examples where completely different diagnoses were given in respect of attendances on the same day and in one instance a reference to a reaction to a drug administered for gout when the duplicate entry for the same day relates to

a chest infection. The Tribunal is most concerned at the flagrant disregard for the health and safety of patients by Mr Philipiah in his fabrication of patient records particularly given the effects of those fabricated records in the hands of either a locum or by a purchaser of Mr Philipiah's practice.

Mr Philipiah's Position

14. Mr McKay, on behalf of Mr Philipiah, emphasised that Mr Philipiah has already undergone significant punishment in respect of these matters. That punishment was not only the imprisonment and home detention but also the substantial payment to the Ministry of Health. The point was also made on Mr Philipiah's behalf that there is no evidence of any patient suffering medically from Mr Philipiah's actions and that is evidenced by a number of references signed by patients.
15. In support of his position, Mr Philipiah's counsel offered the transcript from the Parole Board hearing which granted Mr Philipiah home detention. In that transcript Mr McKay brought the Tribunal's attention to the fact that the Chair of the Parole Board's view was that the penalty appeared substantial given the offending although Mr McKay did accept that the Board was dealing specifically with the issue of home detention. The Tribunal notes that the transcript deals only with the limited charges making up the convictions and appears to confuse those criminal convictions with the settlement of further claims. The Tribunal accepts Mr Woolford's submission that clearly in making those comments the Parole Board did not have all the information relating to the circumstances of the offending before it.
16. In respect of the matters relating to costs Mr McKay outlined the financial position of Mr Philipiah and the fact that a Remuera rental property had been sold largely to pay for the settlement with the Ministry of Health.

Medical Practitioners Act 1995

17. Section 109(1)(e) of the Medical Practitioners Act 1995 (the "Act") provides that a medical practitioner may be disciplined if the Tribunal is satisfied that the practitioner has been convicted by any court in New Zealand of an offence punishable by imprisonment for a term of three months or longer, and the

circumstances of that offence reflect adversely on the practitioners fitness to practice medicine.

18. There is no dispute that Mr Philipiah has been convicted of an offence that is punishable by imprisonment for a term of three months or longer.
19. The issue then remains as to whether the circumstances of the offences reflect adversely on Mr Philipiah's fitness to practise medicine. The Tribunal is unanimously of the view that Mr Philipiah's actions in making claims for patient visits he did not undertake were for the purposes of pecuniary benefit to himself and they do reflect adversely on his fitness to practise medicine. This is emphasised by the action taken by him to attempt to substantiate the claims he made. His fabrication of patient records and the flagrant disregard for patients' health and safety is, in the Tribunal's view, a most serious aspect to this offending. Further, the Tribunal considers that Mr Philipiah's actions in requesting his patients to make false statements in order to support him was an abuse and breach of trust.
20. Given that it is the Tribunal's view that Mr Philipiah has been convicted of an offence punishable by a term of three months or longer and that the circumstances of that offending reflect adversely on his fitness to practice medicine, then the range of penalties set out in section 110 of the Act include:
 - An order that the name of the medical practitioner be removed from the Register;
 - An order that registration of the medical practitioner be suspended for 12 months;
 - An order that the medical practitioner may, for a period not exceeding three years, practise medicine only in accordance with specific conditions;
 - An order that the medical practitioner be censured; and
 - An order that the medical practitioner pay part or all of the costs and expenses of the inquiry.
21. In this instance although the specific amounts giving rise to the fraud convictions are not particularly high, clearly this Tribunal is to look at "the circumstances" of the case including the fabrication of patient records and the attempts by Mr Philipiah

to seek the support of some of those people unwittingly involved in his fraudulent schemes by obtaining from them false statements.

Order of the Tribunal

22. The Tribunal finds that Mr Chrisitie Arianesan Philipiah has been convicted of offences punishable by a term of imprisonment of three months or longer and that the circumstances of the offending reflects adversely on his fitness to practise.

23. The Tribunal therefore makes the following orders:

- (a) That Mr Christie Arianesan Philipiah's name be formally removed from the Register;
- (b) That he be censured;
- (c) That publication of these orders be published in the New Zealand Medical Journal; and
- (d) That Mr Christie Arianesan Philipiah pays 40 per cent of the costs and expenses incidental to this inquiry.

DATED at Auckland this 31st day of December 2003

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P Kapua

Deputy Chair

Medical Practitioners Disciplinary Tribunal