



## **MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL**

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**DECISION NO:** 299/04/121C  
**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 **NAYAN**  
**PRASANNA**  
**KARUNASEKERA** former  
medical practitioner of Greymouth

### **BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL**

**TRIBUNAL:** Ms P Kapua (Chair)  
Mr P Budden, Dr J C Cullen, Dr R J Fenwicke, Dr A D Stewart  
(Members)  
Ms K L Davies (Hearing Officer)  
Mrs G Rogers (Stenographer)

Hearing held at Wellington on Monday 2 August 2004

**APPEARANCES:** Ms J C Hughson for a Complaints Assessment Committee ("the CAC").

Ms J Gibson for Dr N P Karunasekera.

### **Introduction**

1. The CAC has charged that Dr Karunasekera, a former medical practitioner, has, on or about 19 September 2003, been convicted by the District Court in Invercargill of three offences of indecent assault under Section 135(1)(a) of the Crimes Act 1961, each being an offence punishable by imprisonment for a term of three months or longer. The CAC charges that the circumstances of the offences reflect adversely on Dr Karunasekera's fitness to practise medicine.
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.
3. Dr Karunasekera arrived in New Zealand with his wife and two young children in February 2002 on a work visa. Both he and his wife secured work in Grey Hospital as resident medical officers and worked under a grant of temporary registration. During his time at Grey Hospital, Dr Karunasekera was involved in a conflict with a senior consultant who was critical of his work although the matter was dealt with by the hospital administration.
4. Towards the end of 2002 Dr Karunasekera and his family went on holiday to Queenstown over the new year period and it was at this time that the offending took place. There were three separate incidents that were the subject of the charges. Dr Karunasekera pleaded guilty to the charges and was convicted and sentenced as follows:

- (a) 12 months supervision; and
  - (b) Referral for assessment at the Adult STOP Programme and, if found suitable, to undertake the programme as directed and to the satisfaction of his probation officer; and
  - (c) Referral for Department of Corrections psychological assessment and treatment as directed by and to the satisfaction of his probation officer; and
  - (d) Payment of reparation (emotional harm) of \$500.00 to each of the three complainants.
5. In the first two incidents, Dr Karunasekera visited a souvenir and gift shop and entered into conversations with the shop assistants. He commented on the shop assistants' skin complexion and persuaded, in both instances, the shop assistant to allow him to conduct a physical examination of her hands and, in the first incident, of the shop assistant's back. During that examination, Dr Karunasekera pulled each of the shop assistant's hands down onto the penile region of his trousers.
  6. In the third incident, Dr Karunasekera approached a shop assistant and enquired about purchasing clothing for his wife. While the shop assistant was displaying the clothing Dr Karunasekera ran his fingers against the shop assistant's breasts and held her breasts for a period of approximately two seconds.
  7. Initially Dr Karunasekera denied all of the allegations, pleaded not guilty and elected to be tried by jury. The depositions hearing took place in March 2003 and in the following six month period, Dr Karunasekera challenged the joining of the charges. It was only after the Court refused severance of the charges that Dr Karunasekera pleaded guilty.
  8. By a decision dated 16 May 2003, the Medical Council resolved to cancel Dr Karunasekera's temporary registration. He is currently not registered to practise in New Zealand.

## **The CAC's Position**

9. Ms Hughson submitted that Dr Karunasekera's offending reflected adversely on his fitness to practise medicine because whilst the offending did not occur in the context of his professional practice, the behaviour fell well short of the standard required of health professionals in their private and professional capacities. The sexual abuse of females in any context is unacceptable conduct on the part of a registered medical practitioner.
10. Ms Hughson referred to the District Court Judge's comments that he did not see Dr Karunasekera as a potential risk to other females although, in Ms Hughson's submission, that was qualified by a sentence that imposed a period of supervision and referral for relevant assessments.
11. Ms Hughson submitted that an appropriate penalty would need to be imposed to send a very clear message to other practitioners that the medical profession will not tolerate any potential compromise of patient safety by a practitioner who presents as a risk by virtue of sexual offending in his or her private life. Further, Ms Hughson submitted that in terms of a penalty, it should be such as to satisfy the public that it can have confidence and respect in the medical profession by its actions in respect of this type of behaviour.
12. Ms Hughson sought, on behalf of the CAC, that there should be relevant conditions imposed on Dr Karunasekera should he apply successfully to be re-registered in New Zealand in the future. It was noted that it was likely that if Dr Karunasekera were to be re-registered in the future, he would undergo a Sexual Misconduct Assessment Treatment ('SMAT') assessment prior to any registration but Ms Hughson noted that that was not a mandatory requirement and would wish to see it as a formal condition imposed by this Tribunal.
13. Ms Hughson further submitted that Dr Karunasekera should be censured, his name published in the New Zealand Medical Journal and that an appropriate level of costs be awarded against him.

### Dr Karunasekera's Position

14. Ms Gibson, on behalf of Dr Karunasekera, accepted that the three counts of indecent assault reflected adversely on his fitness to practise medicine.
15. Ms Gibson submitted that under the current Medical Council policy all doctors convicted of sexual offences would have to undergo a SMAT assessment prior to any re-registration. Dr Karunasekera is part way through his STOP programme and Ms Gibson submitted reports that indicated that as part of the course, Dr Karunasekera is gaining an understanding of the effect of his abuse and is working positively towards addressing changes aimed at ensuring that such behaviour will not occur in the future.
16. As mitigating factors, not aimed at excusing his behaviour, but providing the context, Ms Gibson referred to the complete cultural change since his arrival, the difficult environment for the family and the very difficult working relationship with a superior culminating in inappropriate and unsubstantiated allegations concerning his competence. Ms Gibson referred to a number of references of support for Dr Karunasekera and the fact that there has not been any previous offending.
17. Ms Gibson invited the Tribunal to compare the scale of Dr Karunasekera's offending with those in the cases of *Ramyasiri*<sup>1</sup> and *Fahey*<sup>2</sup> where the offending was of a severe nature and was in the context of a doctor/patient relationship. Ms Gibson pointed out that Dr Karunasekera had not practised medicine in New Zealand since December 2002 and as Dr Karunasekera is not registered, his name cannot be removed.
18. Ms Gibson emphasised the point that the Tribunal should take into account the Judge's sentencing notes which included a number of findings on mitigation. She reiterated that the Tribunal was not here to punish Dr Karunasekera again but to deal with him in terms of the overriding issue of public safety.

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<sup>1</sup> MPDT Decision 35/97/15C

<sup>2</sup> MPDT Decision 144/00/64C

19. Ms Gibson accepted that there could be some conditions applied to any practice in the future and confirmed that Dr Karunasekera would consent to undergoing the SMAT course.
20. In relation to costs, Ms Gibson submitted that they should be at the lower end of the scale as Dr Karunasekera has not been working since December 2002 and he and the children are dependent upon his wife's income.

### **Medical Practitioners Act 1995**

21. 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 offending reflect adversely on the practitioner's fitness to practise medicine.
22. There is no dispute that Dr Karunasekera has been convicted of an offence that is punishable by imprisonment of a term of three months or longer.
23. Similarly, there is no dispute that the circumstances of the offences reflect adversely on Dr Karunasekera's fitness to practise medicine.
24. The Tribunal unanimously agrees with the position taken by both counsel.
25. As Dr Karunasekera has been convicted of offences punishable by a term of three months imprisonment or longer and the circumstances of that offending reflect adversely on his fitness to practise medicine, 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 the 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 enquiry.
26. The Tribunal agrees with counsel that as Dr Karunasekera's name is not currently on the Register there is no need to impose a penalty removing his name. The Tribunal however is of the view that censure and publication in the New Zealand Medical Journal is appropriate in these circumstances.
27. Should Dr Karunasekera wish to re-register, it is the Tribunal's view that re-registration should not occur until completion by Dr Karunasekera of the STOP programme. While the decision as to re-registration is one for the Medical Council, the Tribunal strongly recommends that prior to re-registration, Dr Karunasekera undertakes the SMAT assessment and that registration and conditions of practice depend upon the outcome of that process. However, the Tribunal supports conditions of practice that are directly related to a need for Dr Karunasekera to practise within a team or with a chaperone and that there would need to be conditions addressing issues of supervision.
28. With regard to costs, and bearing in mind Dr Karunasekera's position, it is the Tribunal's view that Dr Karunasekera should contribute 15% of the costs and expenses of the prosecution and hearing of this enquiry. These costs are at the lower end of the scale based on Dr Karunasekera's acceptance of the charge and his co-operation and commitment shown to rehabilitation.

### **Order of the Tribunal**

29. The Tribunal finds that Dr Nayana Prasanna Karunasekera has been convicted of offences punishable by a term of imprisonment of three months or longer and that the circumstances of the offending reflect adversely on his fitness to practise.

30. The Tribunal therefore makes the following orders:

- (a) That Dr Karunasekera be censured;
- (b) That publication of these orders be published in the New Zealand Medical Journal;
- (c) That any application to re-register should not occur until completion by Dr Karunasekera of the STOP programme;
- (d) That a recommendation be forwarded to the Medical Council that Dr Karunasekera undertake the Sexual Misconduct Assessment Test and that registration and conditions of practice that might be imposed following that process should address matters such as practising within a team or with a chaperone and issues of supervision.
- (e) That Dr Karunasekera pays 15% of the costs and expenses of the prosecution and hearing of this inquiry.

**DATED** at Auckland this 15<sup>th</sup> day of September 2004

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P Kapua

Deputy Chair

Medical Practitioners Disciplinary Tribunal