



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO: 320/05/127C

IN THE MATTER of the Medical Practitioners Act
1995

-AND-

IN THE MATTER of disciplinary proceedings
against P medical practitioner of
xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Friday 9 September 2005

PRESENT: Miss S M Moran (Chair)

APPEARANCES: Ms K P McDonald QC for the Complaints Assessment Committee
Mr J H McD Eaton and Ms P A Robertson counsel for
Dr P.

IN ATTENDANCE: Ms Kim Davies – Hearing Officer.

TRIBUNAL: Ms J Courtney, Dr R J Fenwicke, Dr M Honeyman,
Dr A D Stewart (Members)

Application by Dr P for an adjournment of the hearing

1. This matter was set down for a hearing on 17 May 2005 in Christchurch for the week commencing Monday, 3 October 2005.
2. Dr P has made an application that the fixture be vacated and the matter be adjourned for the hearing to commence at a subsequent time.
3. Ms Robertson as counsel on behalf of Dr P has filed a memorandum with written reasons which are:
 - (a) Since the commencement of this matter Dr P had retained Mr Hampton QC as his counsel but more recently Mr Hampton returned Dr P's file to him.
 - (b) Dr P took the file to Ms Robertson on 16 August 2005 and instructed her to retain other senior counsel.
 - (c) Ms Robertson has made enquiries of several barristers in Christchurch, none of whom are available at short notice to be ready for the hearing on 3 October.
 - (d) Mr Philip Hall, a barrister of Christchurch, is willing to be retained as counsel provided the hearing is adjourned as he is not available during the week of 3 October.
 - (e) Ms Robertson has kept the Secretary for the Tribunal informed of developments as soon as they became known to her.
4. There was some confusion as to why Mr Hampton had returned Dr P's file to him. Ms Robertson was concerned to put on record how that had come about. In her memorandum she explained:

- (a) Some time in mid to late July 2005 Mr Hampton told Dr P that he was considering his own career options given how long he had been in practice.
 - (b) On 2 August 2005 Mr Hampton wrote to Dr P advising him that he would no longer be acting and asked Dr P to contact him.
 - (c) Dr P saw Mr Hampton on or about 5 August 2005 at which time the latter gave the doctor his file, suggested he contact Ms Robertson, and recommended that the doctor retain new senior counsel.
 - (d) Dr P has advised Ms Robertson that if Mr Hampton had not returned his file to him he would still be represented by him.
 - (e) Dr P telephoned Ms Robertson's office on either Friday, 5 August 2005 or the following Monday, 8 August to make an appointment to see her on 16 August, and that Ms Robertson had been in touch with the Secretariat of the Tribunal since that time to keep it informed.
5. On 9 September 2005 a telephone conference was convened with the Chair, Counsel for both parties and the Hearing Officer, when Mr Eaton on behalf of Dr P made oral submissions in support of Ms Robertson's written reasons.
 6. Mr Eaton explained that Mr Hall, who was prepared to be retained by Dr P, was presently overseas and could not be available to appear as counsel on 3 October 2005 but was prepared to make himself available for a hearing at a later date which was suitable to all involved. Mr Eaton emphasised that if the hearing were not adjourned then Dr P would have no realistic option but to attend it without appropriate legal representation.
 7. On behalf of the Complaints Assessment Committee Ms McDonald stated that she was not prepared to consent to any application for an adjournment and was concerned that the woman, who is the subject of the charge, might be adversely affected if the hearing were adjourned. She also said that she had already put in place arrangements for the medical witnesses to attend the hearing.
 8. What did emerge during the conference call was that if the matter were to be adjourned both Ms McDonald and Mr Hall would be able to appear as counsel

during the week commencing 20 February 2006. However, if a fixture were made for that date then it would be subject to the complainant and witnesses also being available.

Decision

9. Following the conference call, all members of the Tribunal were fully informed of the situation.
10. The Tribunal was reluctant for the hearing to be adjourned but acknowledges that through no fault of his own, Dr P will be left without representation from his counsel, Mr Hampton; and that despite efforts made on his behalf to retain other senior counsel, none were available at short notice to represent him on 3 October.
11. In a matter such as this, in order that a hearing be conducted as fairly and appropriately as possible for both parties, it is important that both parties have representation by senior counsel.
12. In those circumstances, the Tribunal will vacate the fixture but only on the understanding that the hearing will be adjourned to the soonest available date next year which, at this juncture, appears to be 20 February 2006 but is subject to further enquiry by counsel.
13. The hearing is adjourned on that basis.

Order of the Tribunal

14. Accordingly:
 - (a) The Tribunal orders that the fixture made for the hearing of this matter for the week commencing 3 October 2005 at Christchurch be set aside; and
 - (b) That the hearing be adjourned to the next available date which, at this juncture, appears to be for the week commencing 20 February 2006 at Christchurch but which is subject to verification.

DATED at Wellington this 13th day of September 2005

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Sandra Moran

Senior Deputy Chair

Medical Practitioners Disciplinary Tribunal