

Medical Practitioners' Disciplinary Tribunal outside Ombudsman's jurisdiction

Legislation	Ombudsmen Act 1975
Agency	Medical Practitioner's Disciplinary Tribunal
Ombudsman	John Belgrave
Case number(s)	W51114 & W51143
Date	2003

Complaint about Medical Practitioners' Disciplinary Tribunal decision to strike off a doctor and media coverage of the hearing—no jurisdiction to investigate—Ombudsman has discretion to investigate matters of administration with respect to the Health and Disability Commissioner's investigation into the doctor's medical practices but only if complainant has sufficient interest in the subject-matter of complaint and consent from the doctor

The Health and Disability Commissioner (HDC) conducted an investigation into the medical practices of a doctor following complaints lodged by two of his patients over the way he treated them with alternative therapies and prayer. The HDC decided to refer the case to the Director of Proceedings who, in turn, brought a case against the doctor to the Medical Practitioners' Disciplinary Tribunal for serious misconduct. The doctor was found guilty of disgraceful professional misconduct and was struck off the medical register.

A number of the doctor's patients wrote to the Ombudsman to complain about the situation. They felt the media coverage and publicity were biased and were upset that their choice of who would be their families' doctor had been taken away from them as a result of the decision to have him struck off.

The Ombudsman replied to the complainants by first explaining that he had no jurisdiction to review decisions of the Medical Practitioner's Disciplinary Tribunal. Any appeal of the Tribunal's determination can be lodged only with the District Court by parties involved in the hearing.

The Ombudsman also advised that he was not in a position to investigate the media. A complaint concerning broadcast media should be forwarded to the Broadcasting Standards Authority, and a complaint concerning the print media should be forwarded to the New Zealand Press Council.

Finally the Ombudsman noted that while he did have jurisdiction to investigate the HDC's investigative process, neither complainant had asked him to do so. However the Ombudsman advised the complainants that if they did want to complain about the HDC's investigation they would first need to obtain written authority from the doctor to lodge a complaint to the Ombudsman on his behalf. Otherwise, as they were not party to the HDC's investigation, it was open to the Ombudsman to use his discretion pursuant to section 17(2)(c) of the Ombudsmen Act to decide not to investigate a complaint on the basis that the complainants did not have a sufficient personal interest in the subject-matter of the complaint.

Further, when lodging a complaint against the HDC, the Ombudsman advised that the complaint must focus on a 'matter of administration' rather than the decision itself. This is because it is not part of the Ombudsman's function to determine whether or not the rights and duties set out in the Code of Health and Disability Services Consumers' Rights have, in any given case, been breached. That is a statutory function of the HDC and, where the HDC encounters inconsistent evidentiary material during the course of his investigation, he has the jurisdiction to decide what weight he puts on all the evidence before him.

The Ombudsman did not receive further correspondence from the complainants. Therefore no investigation into the HDC's investigation or the Director of Proceedings' decision to bring a case against the doctor was conducted by the Ombudsman.

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