ADVICE

DR ROLLESTON

My instructing solicitor has sought my advice as to whether a complaint should be lodged against Dr Rolleston based upon allegations made by Patient A and Patient B.

I have been briefed with the material listed in the schedules headed "Contents of Brief of Evidence".

Background

At all relevant times Dr Rolleston carried on a practice as a general practitioner in St Ives between 1969 and 1979. He was also engaged to work at Royal North Shore Hospital. Dr Rolleston has been contacted in relation to each of the complaints. He has no recollection of either Patient A or Patient B. He does not recall Patient A's brother or sister. He denies any suggestion that he sexually assaulted any of them. Dr Rolleston has stated that he no longer has his records relating to his practice at St Ives. He has acknowledged that the Royal North Shore record relating to Patient B was completed by him. Again, however, he denies that anything inappropriate occurred during the course of his attendance on Patient B. Dr Rolleston states that he has no other independent recollection of Patient B.

Previous complaints against Dr Rolleston have been made by Patient A and Patient B. Those earlier complaints were referred to the HCCC. The complaint by Patient A was discontinued by the HCCC on 10 December 2003. The investigation was discontinued because Patient A had failed to provide further

and better particulars about his complaint and did not provide a statutory declaration to verify his complaint.

Patient B first complained to the HCCC on 13 August 1998. That investigation was terminated for a number of reasons, including the age of the matter, the lack of "corroborative evidence" and because the view was taken that there was a strong possibility that a complaint would be stayed. It was also noted that there had been no other complaints of this nature against Dr Rolleston. Patient B's complaint was not matched to Patient A's complaint when the latter was made 2 years after the termination of Patient B's complaint.

I am briefed to advise as to whether proceedings should be commenced against Dr Rolleston by way of complaint to the Medical Tribunal. In order to consider the matters relevant to that decision, I will review the individual complaints and then consider the cumulative effect of those complaints.

Patient A

A complaint by Patient A was made to the HCCC in August, 1998. The HCCC terminated the investigation, primarily because of the perceived prejudice to Dr Rolleston given the 22-year delay between the alleged event and the complaint. The matter has again been referred to the HCCC, this time by the Medical Board, because it has been cross-referenced to the complaint by Patient B.

Subsequent investigation of the complaint has revealed that Patient A has complained to other people about the matter. However, those complaints were made to other people, including medical practitioners, in about 1997/1998. That is, just prior to Patient A making a complaint to the HCCC in August 1998. It also appears that his mother is aware of the allegations. A statement should be taken

from her dealing with the circumstances in which she became aware of the complaint.

The complaint made by Patient A does not suffer from the inconsistencies in relation to the complaint made by Patient B, as set out below. The major problem with the complaint, as recognised in 2001, is the delay in making the complaint and the resultant prejudice which flows to Dr Rolleston as a result of that delay.

Patient B

Patient B complains that he was sexually assaulted by Dr Rolleston when he was "around 12 years of age" (about 1974 – 1975) and on a second occasion, the date of which he does not recall at all.

There are a number of inconsistencies in the versions given by Patient B. In an email dated 30 August 2006, Patient B complains that he was assaulted on three occasions, once at the Doctor's surgery and twice at home. In his statement dated January 2007, he complains that he was assaulted on two occasions, once at the surgery and once at home. There are also differences between what he claims to have occurred at home. In his email account he stated that, "**We went** into my bedroom at the rear of the house where he masturbated me **each** time". In his statement, he said that he was ill **in bed** and that the Doctor came into his room. It is also noted that Patient B complained that "**whenever** he attended [Dr Rolleston] for a consultation, Dr Rolleston would "masturbate me". As noted above, the number of occasions when such assaults occurred has now been limited to two. Such discrepancies detract from the veracity of Patient B's complaint.

It is also noted that in May 2003, Patient B sent an email complaining that Dr Rolleston had assaulted him and his two siblings. He identifies his brother but

no information is provided as to the identity of his sister. I am not aware of any inquiries made about these two people. They may be able to provide crucial evidence. Like Dr Rolleston, they may claim to have no recollection of any such things, contrary to the allegations of Patient B. Proper consideration cannot be given to the decision to lay a complaint without ascertaining what they can say about these claims.

In an email dated 10 July 2006, Patient B stated that, "Since 2003, I suffered a nervous breakdown over many things, this incident just one part of it". Records obtained show that Patient B attempted suicide in or around May - June 2004. According to the entries in the records dated June, 2004, the precipitating causes of the attempt were "social stressors". There was nothing in the history in relation to a sexual assault. Similarly, in relation to an admission in May 2004, Patient B did not complain about a sexual assault.

The first record of a complaint to another medical practitioner is contained in the notes of Dr Wynn who saw Patient B on 23 January 2007. On that occasion, Dr Wynn made a note regarding an "abuse issue". No further details were provided. It is to be noted that the complaint about abuse was made in January 2007, that is, at a time when Mr AWH was requesting the HCCC to take action against Dr Rolleston. Should any further action be contemplated it is my view that the HCCC should attempt to obtain from Dr Wynn as much information as possible about the "abuse issue". More importantly, the HCCC should interview AWO REDAC to see what, if anything, he has to say about these matters.

It is also noted that Patient B's assertion that his grandfather was admitted to hospital by Dr Rolleston on the occasion that he was assaulted at home has not been corroborated by subsequent investigations. It may be that a search for admissions relating to Mr REDACTED for years other than 1974-1975 may clear up this absence of supporting evidence. If a decision were made to go further, it would seem to me to be necessary to check for admissions for Mr REDACTED

for the years 1970-1975 inclusive. Further, the investigator should ascertain whether Dr Rolleston was the doctor who recommended the admission of Mr REDACTED.

Apart from those matters, Patient B was reluctant to provide a statutory declaration to support his complaint. His failure to do so, without credible reason, may be telling against his credit in relation to the particulars of the complaint.

I am also concerned that Patient B was unable to identify Dr Rolleston without assistance from investigators. In emails between Patient A and the Case Officer in May 2003, it appears that Patient B was unable to identify the Doctor by name and that he was assisted in that task by the Case Officer. It may be that a review of the file will confirm whether this is what occurred. If it was, it would severely detract from the complaint by Patient B, if the HCCC was unable to prove that Dr Rolleston was the person referred to by Patient B.

Further Proceedings

If asked to consider the complaints individually, I would recommend that no further action be taken because of the delay, to date, and in light of the HCCC's original determination not to pursue either of the matters. No "fresh" evidence has been identified. The information available now, was available at the time the investigation of the complaints was terminated.

There are, within the investigation reports, references to the lack of corroboration of each of the complaints. Given the nature of the complaints, it is unlikely that there would be evidence which would "corroborate" the commission of the offence. All that can be relied upon is evidence of complaint. In relation to both of the matters, there is an absence of evidence of complaint for a period of many years.

Further, it is not known whether the complainants know each other or whether, through some other means, they have learned of the other's claims. This must be canvassed with each of the complainants.

If there is no suggestion that there has been "contamination" of the evidence of either of the complainants there are good reasons to investigate the matter further. There is a similarity between the actions complained about despite the period of time that elapsed between those events. It is also of some note that both complainants were, at the time of the events, in the care of their grandparents.

Even if one assumes that the individual complaints draw some strength from the fact of the other complaint, that was information that was available when the second complaint was made in 2003. There is no explanation as to why the matters were not cross-referenced when the second complaint was made. In any event, Dr Rolleston might be granted separate hearings for each of the complaints. If that occurred, there would be no capacity to rely on the fact of two complaints.

In light of all of these matters, it would be almost impossible to resist a stay application brought on Dr Rolleston's behalf.

In my opinion, the HCCC is not in a position to lay a complaint until such it has determined whether the evidence of either patient has been contaminated by, or because of, the other's complaint, and whether there is available other evidence from family members of each which confirms, or tends to confirm, the allegations they each make.

Having regard to the nature of the complaints, and to considerations arising because of the fact of two separate complaints, it may be prudent to refer the matters to the NSW Police Service.

If one assumes that such matters are investigated, and it is discovered that there is no impediment to laying the complaint, it is still necessary to determine whether the age of the matters militates against laying the complaint. It has previously been decided that the delay in each case was such that undue prejudice would be suffered by Dr Rolleston if the complaints were laid. It is difficult to see how, after further years of delay, that decision can be reversed. However, it seems that a fully informed decision on the matter cannot be made until further investigations have been undertaken. If it is decided not to investigate further, then it seems inevitable that the HCCC should abide by its previous decisions.

I so advise.

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