IN THE MEDICAL AND DENTAL PROFESSIONAL CONDUCT TRIBUNAL

Application No. 1 of 2015

IN THE MATTER of a complaint by the Fiji Medical Council and pursuant to Section 74(1) (d) of the Medical and Dental Practitioners Decree 2010

BETWEEN	:	Fiji Medical Council	**Applicant**
AND	:	Litiana Browne	**Respondent**
BEFORE	:	The Hon. Mr Justice David Alfred Dr Abdul Wahid Khan	**President** **Member**
Counsel	:	Ms N Tikoisuva for the Applicant Ms L Jackson for the Respondent	
Date of Hearing	:	12 November 2015	
Date of Ruling	:	13 November 2015	

RULING

1. This matter had been fixed for hearing on the 12 and 13 November 2015. Those dates had been fixed on 7 September 2015 and informed to all concerned.

2. However when it came up for hearing on 12 November 2015, I was informed by Mr Prasad, the C.E.O of the Applicant, that one of the 2 panel members, Dr Lisi Tikoduadua was in Japan and would only be returning to Fiji, the following week. The other member Dr Abdul Wahid Khan was present.

3. I had therefore to adjourn the hearing to 17, 18 and 19 February 2016 at 9am on each day, for reasons that I stated orally.

4. In the circumstances, both Counsel asked me to provide a written ruling for the benefit of all those taking part in hearings before the Tribunal if a similar situation were to recur. I stated that I would deliver my written ruling the next day and I do so now under the provisions of Section 75 (2).

5. This Tribunal was appointed by the Hon. Chief Justice pursuant to Section 70(1) of the Medical and Dental Practitioners Decree 2010(the Decree). It comprises myself as President and Dr Lisi Tikoduadua and Dr. Abdul Wahid Khan as members.

6. The Decree in Section 70 lays down the following requirements for the composition of the Tribunal:
   (1) It shall consist of 3 members appointed by the Chief Justice.
   (2) The President must be a person who is qualified to be judge of the High Court.
   (3) The 2 other members must be registered medical practitioners (as the Respondent here is a Medical Practitioner) from the panel appointed by the Minister.
   (4) The members must include one woman and one man.

7. Section 72(1) of the Decree lays down that if there is a vacancy on the Tribunal, the proceedings must be adjourned until the vacancy is filled.

8. Section 71(2) provides that the Chief Justice may remove a member of the Tribunal from office – for breach of, or non-compliance, with a condition of appointment, for misconduct, or for failure or incapacity to carry out official duties satisfactorily.

9. I would consider persistent failure to attend hearings of the tribunal on the part of a member to be grounds for his or her removal from office.

10. Section 71(3) states that the office of a member of the Tribunal becomes vacant if the member dies, resigns by written notice to the Chief Justice, ceases to satisfy the qualification for appointment to the Tribunal or is removed from office under subsection (2).

11. In the present circumstances there is no vacancy in the strict legal sense because a member is absent but her office as member has not become vacant.

12. I hold that the intention of the Decree is that there be 3 members of the Tribunal present at all times during the conducting of an inquiry into a complaint laid before it. I have come to this conclusion for the following reasons:
    (1) The Tribunal consists of 3 members (Section 70(1)).
    (2) If there is a vacancy the proceedings must be adjourned till the vacancy is filled which clearly means it cannot carry on if only 2 members are present. (Section 72(1)).
    (3) Applying the analogy of a panel of the Court of Appeal where only 2 of the 3 Justices of Appeal are present, it is inconceivable that the hearing of an appeal would proceed.

13. In the present matter there was an additional reason why it could not proceed. This was because the only woman member was absent and to have proceeded would have itself been in breach of Section 71(5) which states the members of the Tribunal must include one woman and one man.

Given at Suva this 13th day of November 2015

Hon. Mr Justice David Alfred

President of the Tribunal