

5 February 2020

Edward Rooney
NZ Herald

cc: Murray Kirkness, David Fisher

Mr Rooney and Mr Fisher,

The New Zealand Defence Force (NZDF) is currently working through a range of questions received from Mr Fisher following the Herald articles of 25 Jan 2020, 26 Jan 2020 and 29 Jan 2020 in respect of historical complaints made against a civilian medical practitioner in private practice. The matters the NZDF investigated through our Court of Inquiry are sensitive and have legal and privacy implications for those involved. We have therefore advised Mr Fisher that answers to his questions are being managed by our Ministerial Services Team to ensure we respond to the Herald's questions, and the material in your articles, carefully and diligently.

However, because Mr Fisher has advised us of an intent to write another article on the same subject this weekend, the NZDF has found it necessary to truncate this process and raise with you immediately key inaccuracies in the previous articles. In particular, we note key inaccuracies with respect to claims made in your article regarding Brigadier Andrew Gray.

We also understand that Brigadier Gray is exploring his options, from a legal perspective, in respect of the allegations and comments made about him.

Corrections

The following detail key aspects of your articles that require retraction and correction:

“To this day, no formal complaint has been made about the doctor to an enforcement agency or regulatory body” (Weekend Herald 25 Jan 2020)

“Nealis said he recommended the complaints be referred to the Medical Council. “That was declined”, he says. And that’s where it stopped” (Weekend Herald 25 Jan 2020)

“A third complaint in 2016 resulted in an investigation that was stopped and not formally referred to the NZ Medical Council” (NZ Herald 29 Jan 2020)

These statements are false.

Brigadier Gray directed Dr Nealis, on 31 August 2016, to refer the matter to the Medical Council. He made that direction within 16 minutes of receiving a report on

the complaints from the NZDF Health Quality Manager via email. Both the Health Quality Manager and Dr Nealis were informed of Brigadier Gray's direction via email reply.

On this written direction from Brigadier Gray, Dr Nealis wrote to the Medical Council on 26 September 2016. A receipted copy of the letter to the Medical Council is enclosed. The name of the doctor and medical practice have been redacted for privacy reasons.

“As he understands it, the Medical Council approached NZDF for the name of the GP and was refused” (Weekend Herald 25 Jan 2020)

This statement is false.

The name of the doctor and the medical practice involved was stated in the NZDF's letter to the Medical Council. This letter, signed by Dr Nealis, is enclosed.

“It is now being accused of a cover-up and trying to gag the Weekend Herald from reporting on its inquiry into the scandal” (Weekend Herald 25 Jan 2020)

As advised to Mr Fisher on 25 Jan 2020, the statement that the NZDF tried to 'gag' the Herald is false.

The NZDF released the report of the Court of Inquiry to Mr Fisher, was aware the Herald planned to publish it, and did not seek to prevent this. In the very short time Mr Fisher afforded the NZDF to comment ahead of the story, the NZDF furnished Mr Fisher with a summary of the report recommendations, and the progress made in completing them. Providing Mr Fisher with additional information on the subject is the opposite of an attempt to 'gag' the Herald.

Courts of Inquiry are protected by statute and pursuant to section 200T of the Armed Forces Discipline Act 1971 must not be disclosed outside of the NZDF without the authority of a superior commander (in this case the Vice Chief of Defence Force). This section of law was historically intended to protect the integrity of a 'free and frank' inquiry process. The NZDF is aware that the definition of 'disclosure' can be confusing to media, however, it is clear that this has not been interpreted by NZDF in the past to mean media cannot report upon the contents of these Inquiry reports. Mr Fisher has in the past written extensively on the content of Court of Inquiry reports provided to him with the same section 200T caveat. To suggest that the NZDF attempted on those occasions, or on this occasion, to 'gag' the Herald is entirely disingenuous.

“...Nealis considers the Inquiry process rorted by conflicts of interest.” (Weekend Herald 25 Jan 2020)

This statement is incorrect and the Herald makes no attempt to provide a basis for printing such a statement.

The Court of Inquiry was assembled by the then Vice Chief of Defence Force in 2018 to inquire into the handling of the complaints in 2012, 2013 and 2016. As the doctor

was an external civilian the Defence Force had no jurisdiction to examine the conduct of the doctor himself, which was more properly a matter for the Medical Council. The Court of Inquiry was not assembled until 2018 so as to avoid any interference with actions by the Medical Council.

The Director of Defence Health was not involved in the assembly of the Court of Inquiry and did not appoint the members of the Court. Additionally the President of the Court of Inquiry was appointed from elsewhere in NZDF, and was not a member of Defence Health. The Director of Defence Health is not the Commanding Officer of any of the witnesses, though he was the direct manager for Dr Nealis (whom the NZDF does not consider as a primary witness).

The NZDF is satisfied that the Court of Inquiry was conducted robustly and in accordance with the Armed Forces Discipline Act 1971. That Act empowers the President of the Court to collect evidence and make findings and recommendations, free of command influence. There was no conflict of interest with the members of the Court, nor with the Vice Chief of Defence Force as the assembling authority.

“Barrister Frances Joychild QC....said the handling of the three complaints showed the importance of ensuring the military’s Operation Respect programme was throughout it’s structure.”

“Joychild said the NZDF should have asked the medical council to investigate the complaints” (Weekend Herald 25 Jan 2020)

These statements are misleading as they represent third-party comment in response to statements that are false.

Statements of a respected commentator lends credibility to the Herald story, but this commentator has been provided false information upon which to comment.

Impact

The Herald has published a series of articles that make false statements on key aspects of the subject.

These false statements have impacted the reputation of the NZDF and individuals serving in the NZDF who took action, including Brigadier Gray. Importantly, these false statements have the potential to impact victims/complainants.

Furthermore, the Herald articles have implied the shortcomings of actions taken in 2012 and 2013 suggest a failure of the Operation Respect program that was not launched until 2016. This actively undermines the efforts of all those involved in Operation Respect since 2016.

Redress

NZDF requests the Herald issue corrections to the false and misleading statements detailed above. NZDF understands that the Herald is considering interviewing other third parties. It would be actively misleading if any such parties were not advised of

the false statements made in your previous articles. We request that you make that clear to any other interviewees.

Yours sincerely



A.J. WOODS
Air Commodore
Chief of Staff HQNZDF

Enclosure:

1. Letter ref 1170/DHD/1, 26 September 2016



Headquarters NZDF

T +64 (0)4 496 0999

Defence House

F +64 (0)4 496 0869

Private Bag 39997

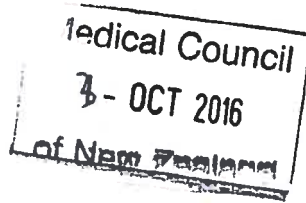
E hqnzdf@nzdf.mil.nz

Wellington 5045, New Zealand

www.nzdf.mil.nz

1170/DHD/1

26 September 2016



Mr David Dunbar
Registrar
Medical Council of New Zealand
Level 6, 80 The Terrace
WELLINGTON
6011

Dear Mr Dunbar

COMPLAINT: s. 9(2)(a)

The New Zealand Defence Force (NZDF) has received a complaint about medical practitioner s. 9(2)(a) during the performance of a pre-enlistment medical examination. The allegation is that s. 9(2)(a)

Although s. 9(2)(a) is not an employee of the NZDF, he was contracted to perform this examination for us, and was paid by us for this service. Accordingly, we believe we have a responsibility to bring this matter to the attention of the Medical Council of New Zealand (MCNZ). Apart from confirming details of the complaint, we have made no further investigations into this matter. However, we have suspended s. 9(2)(a) until further notice from the list of medical practitioners who are approved to perform recruitment medicals under contract to NZDF.

During our preliminary review of this recent (August 2016) complaint, we became aware of two previous complaints (August 2012 and May 2013) made by women who were being examined for the purpose of pre-enlistment medicals. As far as we can ascertain, these complaints concerned the behaviour of the doctor performing the medical, who we understand was s. 9(2)(a) in both cases.

We are currently contacting the women involved and obtaining their consent to allow us to provide the MCNZ with their names and contact details. When we have received this confirmation, we will be in contact with the MCNZ.

If you have any queries, please do not hesitate to contact me through Health Quality Manager ss 9(2)(a) & 9(2)(k), who is managing this matter.

Yours sincerely

Wing Commander Dr Paul Nealis
NZDF Chief Medical Officer, Deputy Surgeon General