

# Counties Manukau District Health Board

**Minutes** of the Special Emergency meeting of the members of the Counties Manukau District Health Board held on Tuesday, 27 March 2007 at 8am at CMDHB offices, 19 Lambie Drive, Manukau

**Present:** Mr Pat Snedden (Chair), Ms Airini Tokerangi, Ms Miria Andrews (arrived at 8.16am), Mr Don Barker, Ms Jillian Dooley (arrived at 8.11am), Mr Bill Mudgway, Anae Arthur Anae, Mr David Collings, Mr Bob Wichman, Mr Paul Cressey, Mr Ross Keenan (only present between 9.14am and 9.46am)

**In attendance:** Mr Geraint Martin, Mrs Anna-Maree Harris (Board Secretary)

## 1. Welcome

The Chair welcomed Board members to the Special Emergency Board meeting called under section 16 of the Public Health and Disability Act.

### Agenda items

Item 1 – Legal advice on Diagnostic Medlab/Labtests judicial review

Item 2 - Provider intervention update

#### Item 1

The Chair thanked D Collings for his suggestions around the way the meeting could be handled and noted that Board members would need to be careful how they handled information during the public part of the meeting.

There were some comments on Ross Keenan's absence, however the Chairman advised that Ross would attend as soon as he was able (prior commitment chairing another meeting).

### Judicial review

B Mudgway asked what the purpose of the Board was if the Chairs/CEOs make all the decisions and if the Board were not told everything.

The Chair responded that the Board was given a paper in July 2005 showing what the aim of the contracting process was i.e. to cap volumes and gain savings of approximately \$8m p.a. The existing provider had agreed to these terms in return for a contract roll-over of a further two years. The subsequent RFP process was predicated on significant further savings to be gained along with a re-configuration of service levels, particularly collection centres.

*Jillian Dooley arrived at 8.11am*

The Chair detailed all dates when the Board received information in either written format or by way of verbal update during the period the contract was discussed:

	Meeting date	Confidential/public	Item number	Paper
1	6 July 2005	Confidential	8	Yes ex Bruce Gollop
2	1 August 2005	Confidential	7	Yes – CEO's report
3	7 September 2005	Confidential	8	No
4	2 November 2005	Confidential	9	No
5	1 March 2006	Confidential	8	No
6	7 June 2006	Confidential	7	Yes
7	5 July 2006	Confidential	8	No
8	2 August 2006	Public	7	No

		Confidential	8	No
9	6 September 2006	Confidential	7	Yes ex Denis Jury
10	4 October 2006	Confidential	7	No

Phil Taylor, reporter from Howick Pakuranga Times arrived at 8.12am

D Collings asked why the Board members were not told of the conflict of interest by Dr Bierre. D Barker responded that the Board was advised but were badly let down by not being advised of the extent of this conflict.

The Chair advised that his first awareness of Dr Bierre's conflict was in late June. At that time the chair insisted an entry go in the regional Chair's minutes that had they known of Dr Bierre's conflict at the time he presented to an earlier meeting in June he would not have been allowed to attend. Mr Brown agreed to take action about that and subsequently wrote to Dr Bierre in July.

*Miria Andrews arrived 8.16am*

The court judgment is clear that even though Dr Bierre informed Mr Brown that he had mothballed his laboratory in July 2005 he nevertheless continued to be in the frame of activity, hoping to be in business.

Mr Cressey noted that he wanted to see a view from this Board table of what has happened and why. He commented that the Regional Deputy-Chair had a mandate to negotiate on behalf of the region. Mr Cressey stated that he remembered asking if all processes were in order and was assured that probity was in order. He noted that his first awareness of Dr Bierre's interest was on page 64 of the paper dated 30 May 2006 in the risk section when Dr Bierre stood down. There was no mention that he was part of the process. He said that Dr Bierre was alluded to but that he (P Cressey) felt gobsmacked about Dr Bierre's involvement. He wanted to recommend commissioning an external review from this Board, and that this was the least the Board could do for the public's interest. He also noted that the pharmacy contract was in the news currently and it was his view that the Board is not kept in the loop over negotiations such as this. The most important issue at this time is provision of lab services from 1 July 2007.

Mr Wichman noted that if the auditor's report was not considered adequate that it should be redone at the auditor's expense.

There was discussion around Dr Bierre's influence on the scope of the RFP and whether this was only from February 06 or prior to this.

Ms Tukerangi commented on the lack of robustness of the conflict of interest process and that this identified a need for a review of processes and decision-making which should align with Audit NZ's processes. Issues going forward are consultation and management of conflict of interest and reviewing terms of reference, reporting frameworks around delegated authorities.

Mr Barker commented on feeling very let down by Dr Bierre's actions and let down by Audit NZ. With regard to national contracts, Mr Barker asked why the Board doesn't have a say in these.

Ms Dooley commented that service provision is paramount.

Ms Andrews had some questions to ask of Mr Keenan around communication lines.

Arthur Anae noted that decisions were based on advice and questioned why this advice fell down. What position was the Board in if it couldn't trust information provided to it?

The Chair said that as Boards we delegate authority because of the scale of business, and expect work to be carried out in a contestable manner. The issue of conflict of interest will now be looked at differently by different Boards.

Mr Wichman asked how far back the Audit NZ work should have gone.

Mr Cressey said that he had gained assurance regarding the reference to Dr Bierre from the Audit NZ report and noted that Audit NZ may not have been asked to cover the whole process. He reiterated his request that a review of processes from CMDHB's point of view be carried out.

Mr Collings asked when the Board was informed about Dr Bierre's involvement/conflict. Mr Barker noted that no specifics were given. The Chair received clarification following the July 2006 meeting with advice from ADHB and the probity audit. Mr Wichman noted that the Board may not have been aware of the significance of the information at that time. Mr Cressey asked for a copy of the information the Chair referred to.

Mr Collings said that the risk analysis was not in the usual format in the July 06 paper i.e. not with flags/symbols and that the review should have shown that Dr Bierre should not have been party to the process. This was confirmed by the judicial review. Mr Collings noted that the Board did not get a 'second take' following awareness of this information.

The Chair clarified that he was advised by Wayne Brown in June/July 2005 that Dr Bierre had mothballed his laboratory plans.

There was discussion around the implications for participation of Board members in discussions on issues relating to their business either currently or in the future, where the person involved in early discussions has some input into shaping the process. The Chair noted that much of what the organisation does, doesn't have a clear pathway for this type of issue.

Anae asked what the rule might be for involvement of Board members – such as a 5 year restriction. Mr Collings noted that a legal opinion he had received at Council specified that he could personally use any information he gleaned in the course of his role as a Councillor as long as it was obtained legally and in an appropriate manner. The Chair stated that there would not be an 'exclusion' period but that all Board members would be required to think more clearly around who participates in discussions. There needed to be certainty and commitment to a resolution as soon as possible.

Mr Collings asked the Chair why Dr Bierre was able to bid when his boutique laboratory was scrutinised. The Chair stated that this gets to the heart of the issue around an individual having an undue influence. The Board was unable to have details around the RFP process from February 06 to June 06 as this would disrupt the confidential process and therefore the Board was mute at this time. It was after December when Dr Bierre had been stood down. Audit NZ checked although it is unclear how fully Audit NZ was engaged under that matter. Mr Collings asked whether the tenderers were accountable.

Mr Cressey noted again that the priority was to get services running and to review, and to advise the public of the situation.

### **Resolution**

It was agreed that the Board's priority is to ensure continuity of services post 1 July 2007.

**Moved** Paul Cressey                      **Seconded** Bill Mudgway                      **Carried** Unanimously

*The media representative left the meeting*

There was a resolution to move the Board into confidence for the purposes of discussing the legal advice and to receive an update on the provider development audit. Mrs Janet Anderson-Bidois, Senior Legal Adviser joined the meeting.

**Moved** Airini Tukerangi                      **Seconded** Don Barker                      **Carried** Unanimously

The meeting closed at 12.25pm.

Signed as a true and correct record on 4 April 2007

Chair                      Mr Pat Snedden

The minutes of the Special Emergency meeting of the Counties Manukau District Health Board of 27 March 2007 are approved.

Recommendation (moved Don Barker/seconded Bill Mudgway)