

Cancer patients expect disappointing payout

By: CATHERALL Sarah

CANCER patients misdiagnosed by Wanganui pathologist Dr James Burkinshaw are poised to strike a compensation deal with their health authority but some are unhappy with the proposed payouts.

Grant Cameron, the lawyer acting for the 20 patients, told Sunday Star-Times last week that negotiations between **Good Health Wanganui** and the 19 women and one man were complete, with an announcement possible within 10 days.

"They will get a payment that none of them feel happy with," he said. The terms of the deal could not be revealed due to a confidentiality clause.

Yesterday Cameron sent a fax to the Star-Times wishing to clear up any "confusion" about his comments. He said no settlement had taken place and that if it did, it would be over to the crown or **Good Health Wanganui** to make any media statement.

Good Health Wanganui's lawyers also released a statement, saying there had been negotiations but no settlement "as yet".

However, the Star-Times understands the patients were sent a deed of settlement in September, outlining the individual amounts they would receive and stressing that both sides had struck an acceptable deal, which had to be kept secret.

Patients who did not sign the deed were sent a reminder letter last month, stating the majority of clients had signed the settlement and were now awaiting payment. Patients were told the settlement could not be finalised - and the money paid out - until everyone had signed the deal.

Burkinshaw resigned from **Good Health Wanganui** because of ill health in 1994 - months after errors were found in his assessment of breast, prostate and cervical biopsies.

Some 54 patients were misdiagnosed and one has since died. Some of the patients had unnecessary treatment, including mastectomies, because of botched diagnoses. In the middle of the year, **Good Health Wanganui** offered cash payments to each of the 20 patients to avoid court action, ranging from \$2000 to \$15,000.

Each patient intended suing for \$250,000 damages and some refused to sign as the offer did not adequately compensate them. Any deal would prevent them suing the authority or Burkinshaw. The proposed settlement amounts are unknown but it is understood that about the same scale has been offered as previously.

Last week, Cameron said it was "fair comment" that the patients had been offered substantially less than they were seeking.

"That is due to a host of legal reasons. It is a very complicated saga. It is one of those (cases) that quite frankly contains significant legal weaknesses."

Burkinshaw is in a Palmerston North rest home, in a locked wing for patients with dementia. Yesterday, his son Greg Burkinshaw said he understood a settlement was in the wind but did not wish to comment further.

He was concerned the hospital had laid the blame with his father. "They passed the buck on to him. He made a few mistakes but he was working with a whole team of medical practitioners."

In 1998, eight of the patients whose cancer biopsies were wrongly diagnosed by Burkinshaw between 1984 and 1994 were given High Court clearance to sue for \$2 million in damages.

The patients were told they were healthy when they actually had cancer and now suffer from various types of the disease.

Another 12 patients, who were misdiagnosed with cancer, are also seeking damages, including those who underwent unnecessary mastectomies. The group was unable to claim ACC compensation because of law changes in 1992 barring lump-sum claims.

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