



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 143/00/65D

IN THE MATTER of the MEDICAL PRACTITIONERS
ACT 1995

AND

IN THE MATTER of disciplinary proceedings against W
medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Monday 6 November 2000

PRESENT: Mr G D Pearson - Chair
Mr P Budden, Dr R S J Gellatly, Dr J M McKenzie,
Associate Professor Dame N Restieaux (members)

APPEARANCES: Ms T Baker for Director of Proceedings
Mr H Waalkens for respondent
Ms G J Fraser - Secretary
(for first part of call only)

DECISION ON APPLICATIONS FOR NAME SUPPRESSION AND PRIVATE HEARING:

1.1 **THERE** are three applications:

- The Practitioner applies for an interim order prohibiting, until the commencement of the hearing, the publication of his name or any fact identifying him;
- The Director of Proceedings applies for an order that the whole of the hearing of the charge of disgraceful conduct be held in private, and
- The Director of Proceedings applied for an order that the publication of the name and occupation of the Patient be prohibited.

1.2 **THE** Practitioner does not oppose the two orders sought by the Director of Proceedings.

The Director of Proceedings opposes the application by the Practitioner. The Patient has indicated that she does not oppose the name suppression application by the Practitioner.

1.3 **IT** is neither necessary nor appropriate to **set out** all of the circumstances alleged to exist.

The Tribunal has material that identifies the allegations, and responses that may be made. However the Tribunal has not seen or heard the witnesses, and of course has no views as to what facts may or may not ultimately be established.

1.4 **IT** is sufficient to record that the charge before the Tribunal is one of disgraceful conduct on the basis that the Practitioner had an intimate and sexual relationship with a patient, and that the allegation and response appear to involve the following:

- There is no dispute that the two persons concerned had an intimate and sexual relationship;
- There is no allegation that the Practitioner engaged in any inappropriate physical contact in the clinical setting;
- The two persons had a business relationship in addition to the doctor/patient relationship;
- The Practitioner maintains that the intimate relationship developed independently of the doctor/patient relationship, and he was not guilty of any professional impropriety.

1.5 **THE** Tribunal is satisfied that the orders sought to protect the Patient **should** be made. It is clear that the evidence in support of the charge is extremely personal, and the Patient believes on reasonable and adequate grounds that if personal information is disclosed she would be harmed. Few complainants would be prepared to give such evidence, unless assured of their confidentiality. There is a clear public interest in ensuring that confidentiality is preserved in such circumstances. The Patient has identified a particular reason why she believes that a suppression order, or orders made at the hearing pursuant to s.107 of the Act, would not be sufficient to protect her privacy, and a private hearing is necessary. The circumstances in the material put before the Tribunal are sufficiently obvious and compelling that the Tribunal is satisfied that it is appropriate to make the orders sought in the interests of the Patient.

1.6 **THE** Tribunal is satisfied that the order sought by the Practitioner should also be made. There are a number of factors, which persuade the Tribunal to this view. One factor that is in itself determinative is the risk of identifying the Patient. The Patient has herself taken this

factor into account and she has indicated that she is satisfied that her identity would be kept confidential if certain details relating to her were not disclosed. The difficulty is that those details include details of the circumstances in which the Practitioner and the Patient had a business relationship, which was distinct from the normal doctor/patient relationship.

The Tribunal is concerned that it would not be fair to the Practitioner to disclose his name and the charge, without disclosing that the allegation relates to a relationship that, at least physically, arose in a context outside a clinical doctor/patient setting. Without that information, it would be supposed by many that the Practitioner faced allegations of inappropriate touching in a clinical setting, or something of that kind. Patients would very likely be much more concerned about continuing to receive treatment from the Practitioner if they made such a supposition than if they knew the actual allegations. The Tribunal has concluded that it is only when the facts have been established at the hearing that it will be in a position to determine properly whether it is possible to disclose the name of the Practitioner with sufficient details of the facts to ensure fairness to the Practitioner, without risking disclosing the identity of the Patient to some persons.

1.7 IN addition to the concern the Tribunal has regarding disclosure of the Patient's identity, a number of grounds were raised for the Practitioner. To a degree, the grounds relate to the inevitable discomfort and embarrassment that is likely to result for any practitioner and the practitioner's family when charges of this kind are brought. The Tribunal is however satisfied that on this occasion some of these factors have more significant weight than might otherwise be the case.

1.8 **THE** Practitioner identified another practitioner who has a name with certain similarities, and other circumstances that are similar, and accordingly there could be confusion of identity between them especially in the medical profession. The Tribunal considers that possibility is a very real one, and at the least, it would be necessary to take steps to avoid confusion between the two. A report of a substantive decision would be much less likely to cause that confusion than a cryptic report of a charge, which may not contain enough detail to aid in accurate identification. This factor accordingly favours making the interim order.

1.9 The Practitioner has challenged the jurisdiction of the Director of Proceedings to bring a charge of this nature. If that challenge is successful, it is possible that the charge may never be substantively resolved. This factor adds to the importance of ensuring that if the Practitioner is identified any publicity must include enough information to be fair to the Practitioner. It is not acceptable to invite ill informed speculation, it is even less acceptable that the Practitioner should be at risk of ill informed speculation being generated in circumstances where there may never be a substantive hearing that ultimately determines the allegations made against him.

1.10 **THE** Director of Proceedings raised the so-called “flushing out” principle, and suggested that other complainants might come forward as a result of publicity about this charge. The information put before the Tribunal does not persuade us that there is anything of significance raised in this regard, beyond the fact that because there is one such complaint, there may be more. In addition, the Practitioner has made a sworn statement that there are no other similar instances that exist, and Mr Waalkens has emphasised that he explained

very clearly to the Practitioner the significance of making such a sworn statement. In addition, it appears to the Tribunal to be very unlikely that there is any similar fact evidence in this case. The allegations giving rise to the charge involve physical contact first occurring outside of the clinical setting, and in the course of contact arising out of the business relationship, already referred to. Those circumstances make it inherently unlikely that there could be “similar fact” evidence.

1.11 IF any further complaints did arise these would be dealt with separately from this current charge. In these circumstances the Tribunal is satisfied publication after the hearing would be as efficacious for “flushing out” complaints, because they would add nothing to the present hearing.

2. ORDERS:

2.1 THE Tribunal Orders:

- The names of the Patient and the Practitioner and any information or fact that might identify them are suppressed pending further order of this Tribunal; and
- The hearing of the charge will take place in private (subject to such conditions as the Tribunal may impose subsequently).

2.2 WE record that the Tribunal will deal with the issue of final orders relating to suppression of the identity of the Patient and the Practitioner after the conclusion of the hearing. We note that the question of a final suppression order in respect of the Practitioner involves different issues to an interim order. Accordingly, the issue will be considered with no preconceptions from this decision, in light of the facts found by the Tribunal.

DATED at Wellington this 14th day of November 2000.

G D Pearson

DEPUTY CHAIR