



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

PO Box 5249, Wellington • New Zealand
Ground Floor, NZMA Building • 28 The Terrace, Wellington
Telephone (04) 499 2044 • Fax (04) 499 2045
E-mail mpdt@mpdt.org.nz

DECISION NO.: 151/00/67C

IN THE MATTER of the MEDICAL PRACTITIONERS
ACT 1995

AND

IN THE MATTER of disciplinary proceedings against
WARREN WING NIN CHAN
medical practitioner of Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Monday 11 December 2000

PRESENT: Mrs W N Brandon - Chair
Ms S Cole, Dr G S Douglas, Dr B D King, Dr L F Wilson (members)

APPEARANCES: Mr R Harrison, QC for Complaints Assessment Committee
Dr W W N Chan
Ms K Davies - Secretary
(for first part of call only)

DECISION ON THE APPLICATION FOR NAME SUPPRESSION

1. THE CHARGE:

1.1 **DR** Chan faces one charge of professional misconduct arising out of his care of Ms A at Auckland during the period 21 June to 24 July 1996. The Particulars of the Charge include allegations that there were serious deficiencies in Dr Chan's anaesthetic practice, and that Dr Chan failed to provide Ms A with adequate information regarding the anaesthetic process, the surgical procedure she was to undergo, the risks associated with that procedure, and the post-operative care that was required.

1.2 **THE** hearing of the Charge was originally scheduled to take place in December 2000, but has been postponed to commence in Auckland on 7 February 2001. Notice of the Charge and the date of hearing was forwarded to Dr Chan on 18 October 2000. Dr Chan has advised the Tribunal that he intends to defend the charge.

2. THE APPLICATIONS:

2.1 **BY** letter dated 2 November 2000 Dr Chan requested "*privacy and name suppression to avoid the scenario of trial by media, which has happened in the past.*" In a further letter dated 30 November 2000, Dr Chan advised that he was seeking name suppression and a private hearing on the grounds that he believed he was entitled to the benefit of natural justice and being presumed innocent of the charges until proven otherwise. In the past media reporting prior to a hearing has been, he believed, actively used by certain plastic surgeons, especially members of the New Zealand Foundation for Plastic Cosmetic Surgery, ('the Foundation') in an attempt to damage his practice.

2.2 **MR** Harrison QC, Counsel for the CAC, seeks an order prohibiting publication of the complainant's name. Mr Harrison submitted that, in summary, the application was made on the grounds that the circumstances giving rise to her complaint "*are particularly harrowing and personal*", and her evidence will involve her giving details of an intimate and distressing nature.

3. SUBMISSIONS BY DR CHAN:

3.1 **AT** the hearing of the applications, Dr Chan represented himself as his insurers have not yet appointed counsel. He reiterated the grounds upon which he sought a private hearing and name suppression (refer paragraph 2.1). He advised the Tribunal that he is concerned to protect his commercial interests, and that it was a "*historical fact that for the last nine years the Foundation has embarked on a campaign to discredit me*".

3.2 **DR** Chan alleged that the Foundation has engaged public relations agents to use publicity about him in a negative way to harm his practice. He stated that this was a matter of fact, not merely allegations.

3.3 **PREVIOUS** cases involving Dr Chan were very different to this present case, and it would be unfair to allow publicity about this case on the basis that there had been other charges brought against Dr Chan in the past.

4. SUBMISSIONS ON BEHALF OF CAC:

4.1 **MR** Harrison advised the Tribunal that the CAC opposed Dr Chan's application. The presumption in the Act was that hearings of the Tribunal should be held in public unless the

Tribunal was satisfied that the circumstances of the case required otherwise. In this case there were no unusual circumstances, or other matters which might make it desirable to grant the applications.

4.2 **SECTION 4** of the Bill of Rights Act also contains a presumption in favour of public hearings in the absence of any unusual or extraordinary circumstances. The hearing of the charge should proceed in public and there should be no suppression of Dr Chan's name. His name had been published in relation to other disciplinary proceedings over the years.

4.3 **IN** relation to Ms A, Mr Harrison submitted that there was no public interest in Ms A's identity. Mr Harrison was seeking interim suppression of her name, and he would be in a better position regarding the need to seek any permanent orders at the hearing and after Ms A has given her evidence.

4.4 **IN** relation to Dr Chan's allegations regarding the activities of the Foundation, Mr Harrison advised the Tribunal that the CAC had no knowledge as to the involvement or otherwise of any other party in relation to the charge.

5. DECISION:

5.1 **FOR** the reasons that follow, the Tribunal's decisions are that Dr Chan's applications are not granted. The application for suppression of the complainant's name is granted.

6. REASONS:

6.1 THE Tribunal is satisfied that in the circumstances of this charge, and given the complainant's right to privacy provided under Section 107 of the Act, it is appropriate to make the order sought on her behalf. In any event, Dr Chan raised no objection to that order being made, and the decision as to whether or not any permanent order is necessary or desirable can be made at the hearing of the charge. Suppressing publication of Ms A's name on an interim basis does not impede the fair reporting of the proceedings, and no public interest in her identity has been established.

6.2 AS on previous occasions, the interests of the complainant and Dr Chan are quite different, and granting the application by or on behalf of the complainant has no bearing on the decision as to whether or not the practitioner's name ought also to be suppressed, unless the identification of the practitioner would invariably also lead to the identification of the complainant. That is not a factor in this case.

6.3 ALSO, there is a wider public interest to be served in protecting the privacy of complainants generally. It is well-established that complainants might well be discouraged from making complaints, which frequently involve disclosing personal and/or distressing information, if their identity became a matter of public knowledge and comment. In professional disciplinary proceedings it is the conduct of the practitioner which is the focus of the inquiry. There are likely to be very few occasions when the identity of the complainant is fairly and reasonably of public interest.

- 6.4** **THE** reasons for dismissing Dr Chan's applications flow from a similar analysis. In deciding whether or not to grant such applications the Tribunal is also required to determine where the public interest lies, and to balance the competing interests of the practitioner, and any other person.
- 6.5** **THE** Tribunal's jurisdiction to make orders such as are sought by Dr Chan is contained in section 106 of the Act. Section 106(1) contains the presumption that "*every hearing of the Tribunal shall be heard in public.*" Section 106(2) provides that "*where the Tribunal is satisfied that it is desirable to do so, after having regard to the interests of any person ...and to the public interest, it may [make an order that] (a) the whole or any part of the hearing shall be held in private...(d) prohibiting the publication of the name, or any particulars of the affairs, of any person.*"
- 6.6** **THE** Tribunal is required therefore to balance the competing interests of the practitioner, his or her family or wider interests, the interests of the complainant, the public interest defined variously as residing in the principle of open justice, the public's expectation of the accountability and transparency of the disciplinary process, the importance of freedom of speech and the media's right to report court proceedings fairly of interest to the public, and the interests of any other person.
- 6.7** **IN** support of his application, Dr Chan says, in effect, that any publication of his name would be exploited by other persons (i.e. the Foundation), to his detriment. Dr Chan did not provide any evidence in support of his submissions, or to substantiate the allegations made.

- 6.8** **THE** Tribunal accepts that Dr Chan is also concerned about the possible news media reporting generally, stating that he feared a repeat of “*a trial by media*”. However, the news media are generally entitled to be present in any court proceedings as representatives of the public, subject to the individual’s right to personal privacy and absent any legitimate public interest. For example, it would be unusual to justify any public interest, in the normal course of events, in family court proceedings and the protection of such private interests is provided for in the relevant legislation.
- 6.9** **QUITE** the opposite applies in present circumstances. In enacting section 106(1) of the Act in the terms that it did, Parliament unequivocally intended that all hearings of the Tribunal should be in public. It is relevant that even in section 107 of the Act, which permits complainants to give evidence of an intimate or distressing nature, or in relation to any matter of a sexual nature, in private, the Act permits “*any accredited news media reporter*” to be present, presumably to enable fair reporting of the proceedings, subject to any orders which may be made to protect the complainant’s identity.
- 6.10** **IN** addition, and in the event that Dr Chan is unhappy with any news media reports of the proceedings, or any such reports go beyond the bounds of fair reporting, there are legal remedies and other avenues of complaint available to him. It may well be the case that the entitlement to legal redress is little comfort after the event, however the Tribunal must presume that the news media will report the proceedings in a fair and balanced way, and indeed, in the Tribunal’s experience, this has generally been the case.

6.11 IT is a matter of fact that Dr Chan has been the subject of previous charges, and that he has been found guilty of such charges on previous occasions. It is equally true that the subject-matter of this present charge may be different. However, these are all matters which are in the public domain, and which are of legitimate interest to consumers of cosmetic services (as potential patients), and to the public generally. This is especially the case when the practitioner advertises his practice and the services he offers to the public, such as Dr Chan does in New Zealand and in Australia.

6.12 THE Tribunal accepts that there may be persons or interests who are actively seeking to curtail Dr Chan's practice. However, the Tribunal has no evidence of any such activity, and Mr Harrison has assured the Tribunal that the CAC has no knowledge or communication with any such persons or interests. The Tribunal therefore does not consider that Dr Chan's submissions in this regard provide good grounds to grant the applications.

6.13 IN all the circumstances, and after carefully balancing all of the various interests involved in these applications, the Tribunal determined that Dr Chan has failed to provide an adequate basis for the applications sought.

7. ORDERS:

7.1 THE application by the CAC is granted and the applications made by Dr Chan are not granted. The Tribunal orders as follows:

7.1.1 THAT the publication of the complainant's name and any identifying details is prohibited until further order of the Tribunal.

7.1.2 THAT the applications for a private hearing and for non-publication of his name made by Dr Chan are dismissed.

DATED at Auckland this 25th day of January 2001.

W N Brandon

Chair

Medical Practitioners Disciplinary Tribunal