



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

PO Box 24463, Manners Street, Wellington • New Zealand
13th Floor, Mid City Tower • B9-143 Willis Street, Wellington
Telephone (04) 802 4830 • Fax (04) 802 4831
E-mail mpdt@mpdt.org.nz
Website www.mpdt.org.nz

DECISION NO.: 255/03/114C
IN THE MATTER of the MEDICAL
PRACTITIONERS ACT 1995

AND

IN THE MATTER of disciplinary proceedings against
CHRISTIE ARIANESAN
PHILIPIAH former medical
practitioner of Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Wednesday 15 October 2003

PRESENT: Ms P Kapua - Chair
Dr R Fenwicke, Dr C P Malpass, Dr A D Stewart, Mrs H White
(members)

APPEARANCES: Mr M Woolford for Complaints Assessment Committee
Mr C C McKay for respondent
Ms K L Davies – Hearing Officer
(for first part of call only)

Decision on the application for interim name suppression

Background

1. The Complaints Assessment Committee has charged that Mr Philipiah, a former medical practitioner from Auckland, that was convicted by the District Court at Auckland on the 29 October 2002 of 28 offences of taking/obtaining/using a document for pecuniary advantage and six offences of obstruction/converting/defeating the course of justice, each offence being one punishable by imprisonment for a term of three months or longer, and the circumstances of the offences reflect adversely on the practitioner's fitness to practise medicine.
2. It is noted that since the convictions, Mr Philipiah has voluntarily removed himself from the Register of medical practitioners. The Tribunal is also advised that Mr Philipiah is currently on home detention serving his sentence.

Application

3. This is an application pursuant to Section 106(2) of the Act for the following orders:
 - (a) That the whole of the hearing shall be held in private;
 - (b) A prohibition of the publication of any report, or account of any part of any hearing by the Tribunal;
 - (c) A prohibition of the publication of the whole of any books, papers, or documents produced at the hearing;
 - (d) A prohibition of the publication of Mr Philipiah's name or any particulars of his affairs.
4. The application sets out a number of grounds that are relied on in support of the application. The first is that Mr Philipiah considers that he has already been punished severely and has settled matters relating to the offences with the Ministry of Health.

Secondly, Mr Philipiah states that the publication of his name previously resulted in anxiety and stress to himself and his family. Thirdly, Mr Philipiah states that publication of his name will affect his son who is a medical practitioner in Auckland and he has attached a letter from his son expressing his concern. Fourthly, Mr Philipiah states that any further publication of his name will be a further punishment. Finally, Mr Philipiah states that because of a heart condition the stress of publication will accentuate a risk and affect his quality of life.

5. Mr McKay, on behalf of Mr Philipiah filed a further Memorandum in response to that of Counsel of the Complaints Assessment Committee, and spoke to that Memorandum during the telephone conference.
6. Mr Woolford on behalf of the Complaints Assessment Committee opposed the application in light of the publicity that has already occurred in respect of the criminal trial and that to order name suppression as this stage would be contrary to the principles upheld by the Court of Appeal in respect of the Court of Appeal's consideration of Mr Philipiah's appeal against the refusal to continue interim name suppression.
7. Mr McKay during the telephone conference emphasised the concern in respect of Mr Philipiah's son and the fact that the name is not a common name.

The Decision

8. While the Tribunal acknowledged some concern for the possible effect on Mr Philipiah's son, it considered that there would already have been an effect on him in respect of the criminal proceedings and the fact that Mr Philipiah is no longer a medical practitioner in terms of the Medical Practitioners Act and purports to have retired may be sufficient to distinguish him from his son.
9. In that regard the Tribunal by majority declines to grant any of the orders sought.

Reasons for the Decision

10. Section 106 of the Act makes it clear that hearings of the Tribunal are to be in public. A number of Tribunal decisions have dealt with this issue and it is well established that the presumption is in favour of public hearings and that unless the circumstances exist as outlined in sections 106 and 107 of the Act the names of all parties would normally be published.
11. In this particular instance there has already been extensive publicity and that has involved details of the offences and the name of the doctor concerned. The matter is already in the public forum and there are no particular circumstances that relate to Mr Philipiah's personal situation that would justify the granting of an order prohibiting the publication of his name.
12. Mr Philipiah was concerned about the continued punishment to him by publication of his name, but it is important to note that these are separate proceedings and the penalty imposed in respect of proceedings brought under the Crimes Act are not a relevant consideration for the Tribunal.
13. The Tribunal clearly has to balance the interests of the applicant and those of the public and in this instance the Tribunal considers that the balance is in favour of the Tribunal conducting its hearing in public. To that end, four of the five Tribunal members declined to grant the application. One Tribunal member sees the balance in favour of granting name suppression based on the possibility of some adverse effects from the publicity on Mr Philipiah's son.

DATED at Auckland this 3rd day of November 2003.

.....

Prue Kapua

Deputy Chair

Medical Practitioners Disciplinary Tribunal