

**DECISION ON THE APPLICATION FOR PROHIBITING PUBLICATION OF THE
COMPLAINANT'S NAME:**

1. **THE** Director of Proceedings of the Health and Disability Commissioner has applied for an order pursuant to Section 106(2)(d) of the Medical Practitioners Act 1995 prohibiting the publication of the name of the initial complainant, xx, or any particulars of her affairs in any manner which may identify her.

2. **GROUNDS OF APPLICATION:**

2.1 **THE** charge against Dr Nealie is a sensitive matter concerning allegations of sexual impropriety.

2.2 **AS** further appearing in the affidavit of xx filed in support of the application.

3. **PROVISIONS OF SECTION 106 OF THE ACT:**

3.1 **RELEVANTLY** summarised, Section 106(1) provides, except as provided later in the Section and in Section 107 of the Act, that every hearing of the Tribunal shall be held in public.

3.2 **SUBSECTION** (2) of Section 106 provides where the Tribunal is satisfied that it is desirable to do so, after having regard to the interests of any person, including the privacy of the complainant, and to the public interest, it may make any one or more of a number of orders. The particular order sought by or on behalf of the complainant is specified in Section 106(2)(d) as detailed in Paragraph 1 above.

4. AFFIDAVIT OF APPLICANT:

THE charge against Dr Nealie concerns an allegation of a sexual relationship between doctor and patient, and an allegation that the former failed to treat the latter's suicide attempt correctly. In summary these matters are intensely private and distressing to the complainant. While aware of the special protections available for complainants under Section 107 of the Act, she requires her name to be suppressed as well to ensure that details of this matter are not made available in the small community in which she lives. The impact upon her children, which has already been bad, would be significantly increased if there was publicity concerning the fact that their mother had made a complaint against a well known doctor.

5. ORDER

PURSUANT to Section 106(2)(d) of the Act the Tribunal makes an order prohibiting publication of the name of xx, or any particulars of her affairs in any manner which may identify her.

6. REASONS FOR ORDER:

6.1 THE Tribunal is satisfied that it is desirable to make the order sought. In so acting the Tribunal is required by the legislation to have regard to the interests and the privacy of the complainant, on the one hand, and to the public interest on the other hand.

6.2 THE interests of the complainant in making this application are detailed in her affidavit. She has acknowledged her awareness of the special protections contained in Section 107 of the Act for complainants to give their evidence in private where the charge relates to or involves any matter of a sexual nature or of an intimate or distressing nature. Notwithstanding the Tribunal considers there is validity in the reasons advanced by the complainant for seeking prohibition of publication

of her name or any particulars of her affairs in any manner which may identify her. The Tribunal agrees with the complainant that any such exposure would not be warranted. The impact of publication on the complainant and her children would outweigh her privacy.

6.3 THE public interest is the second statutory consideration. Section 106(1) states the principle, subject to certain exceptions, that every hearing of the Tribunal shall be held in public. The complainant explained in her affidavit that she does not wish the hearing to be in private. She believes that what Dr Nealie has done ought to be made public so that there is accountability in full for his actions.

6.4 TO the extent that there is a presumption in favour of Tribunal hearings being held in public, it accords with that presumption, and it can be said to be in the public interest, that the complainant has not sought an order for the hearing to be held in private. The public interest will be served by the complainant seeking the least restrictive of the orders available under Section 106 of the Act.

6.5 A third and final reason for the making of this order is that Mr Waalkens acting for Dr Nealie, while not able to consent formally to the application, agreed that it was an appropriate application in the circumstances.

Dated at Auckland this 16th day of February 1998.

P J Cartwright

CHAIR