

Medical Practitioners Disciplinary Tribunal

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DECISION NO.: 37/98/22D

IN THE MATTER of the MEDICAL PRACTITIONERS

ACT 1995

AND

IN THE MATTER of disciplinary proceedings against **RITA**

EILEEN MIDDLETON medical

practitioner of Masterton

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Thursday 28 May 1998

PRESENT: P J Cartwright - Chair

Dr B D Evans, Professor Dame Norma Restieaux, Dr B J Trenwith,

Ms S Cole (members)

APPEARANCES: Ms K G Davenport, Director of Proceedings

Dr R E Middleton

Ms G J Fraser - Secretary

(for first part of call only)

DECISION ON APPLICATION FOR ORDER PROHIBITING PUBLICATION OF NAME

- 1.1** **THE** Director of Proceedings under the Health and Disability Commissioner Act 1994 has determined that a complaint made to the Health and Disability Commissioner should be considered by the Medical Practitioners Disciplinary Tribunal ("the Tribunal"). The charge against Dr Middleton has been set down for hearing in Wellington on 16 June 1998.
- 1.2** **APPLICATION** has been made for an order prohibiting publication of the name of Dr Middleton (Section 106(2)(d) of the Act) pending the finding of the Tribunal.
- 1.3** **IN** advance of the telephone conference hearing Dr Middleton supplied the following details in support of her application:
- 1.3.1** **SHE** has practised as a general practitioner since 1975 in various locations, both in New Zealand and overseas. Most recently she has practised in Masterton since 1987.
- 1.3.2** **SHE** is divorced, and has sole custody of five children, two of whom reside with her in Masterton.
- 1.3.3** **IN** addition to her general practice, she does much of the abuse work in the Wairarapa. This involves examining victims of both sexual and physical abuse.
- 1.3.4** A large percentage of her general practice are elderly.

- 1.3.5** **LIVING** in a small town means that information is often exaggerated and altered as it is passed around the community, as it invariably is.
- 1.3.6** **SHE** is concerned that the publication of her name, or other details that identify her, may cause undue strain for her family.
- 1.3.7** **SHE** is also concerned that publication of her name may cause unnecessary worry for her elderly patients.
- 1.3.8** **IN** her abuse work, it is important to be able to win the confidence of the person whom she is examining quickly, in order to avoid further trauma to them. These people are often in a very fragile state. If they have concerns regarding her competence, this would be more difficult to do.
- 1.4** **AS** Director of Proceedings, Ms Davenport submitted that the matters outlined in Dr Middleton's application are only relevant if there is a real risk of publicity in the town of Masterton itself. In Ms Davenport's view this is not a real risk where the hearing is many miles away in Wellington, and where most if not all the people identified in Dr Middleton's application are unlikely to become aware of any hearing.
- 2. ORDER:**
- 2.1** **IT** is the order of the Tribunal that the application for suppression of name be refused.

3. REASONS FOR ORDER:

3.1 THIS is a formal application pursuant to Section 106(2)(d) which provides, where the Tribunal is satisfied that it is desirable to do so, after having regard to the interests of any person, including without limitation the privacy of the complainant, and to the public interest, it may make an order prohibiting publication of the name, or any of the particulars of the affairs of any person.

3.2 IN considering the application, information relating to the interest of the respondent doctor only has been placed before the Tribunal. The formal position of the complainant is not known.

3.3 HOWEVER Ms Davenport took, in our view, a sensible approach in indicating she would not oppose making the order if there was a genuine risk to Dr Middleton of publicity occurring in Masterton.

3.4 DURING the teleconference the Chair explained to Dr Middleton that public notice of the hearing in the newspaper would not include her name. This seemed to allay much of Dr Middleton's anxiety concerning possible publicity in Masterton.

3.5 THE interests of Dr Middleton had been explained in her application. The Tribunal does not consider that any of them are particularly compelling, although there will often be family considerations which require sensitivity. There is never likely going to be a case when reputation is not in issue. Many medical practitioners have a close involvement in their community. And for many doctors, often in practice for several years without a blemish on

their record, in times of heightened accountability and a sharper consumer focus, there will be a first time experience of the professional disciplinary process.

3.6 **THUS** having had regard to the interests of Dr Middleton, and nominally the privacy of the complainant, the Tribunal is directed by the statute to have regard to the public interest.

3.7 **THE** general requirement of Section 106 should be noted, that every hearing of the Tribunal shall be in public. One of the major criticisms of disciplinary procedures under the 1968 Medical Practitioners Act was that hearings were held in private. That disciplinary proceedings against medical practitioners should generally be held in public accords with the principles of open reporting and the public interest, which were emphasised by the Court of Appeal in *R v Liddell* [1995] 1 NZLR 538 at 546-547.

3.8 **WHILE** there may be tensions on occasions between the need for public and open reporting and privacy issues, there are many instances in, for example, the criminal law, where the public interest and privacy concerns of the parties are balanced without difficulty.

3.9 **HAVING** considered carefully the reasons advanced by Dr Middleton for suppression of her name pending the outcome of the proceedings against her, the Tribunal has not been satisfied that it is desirable to grant the application. In making its assessment the Tribunal has weighed the interests of Dr Middleton (and nominally the privacy of the complainant) against the public interest in deciding that the interest of the latter should prevail. Consequently the application is declined.

DATED at Auckland this 9th day of June 1998.

P J Cartwright

CHAIR