

Medical Practitioners Disciplinary Tribunal

*PO Box 5249 Wellington Telephone (04) 499-2044 Facsimile (04) 499-2045
All Correspondence should be addressed to The Secretary*

DECISION NO.: 44/98/25C

IN THE MATTER of the MEDICAL PRACTITIONERS

ACT 1995

AND

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

medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Friday 17 July 1998

PRESENT: Mrs W N Brandon - Chair

Dr R S J Gellatly, Professor Dame Norma Restieaux,

Dr B J Trenwith, Mr P Budden (members)

APPEARANCES: Mr H Waalkens for respondent

(for first part of call only)

Mrs D M Haswell - Assistant Secretary

DECISION ON THE APPLICATION FOR NAME SUPPRESSION:

1. **THIS** application was heard by the Tribunal at a telephone conference on Friday 17 July 1998. Mr Waalkens made submissions in support of the Application and an Affidavit of the Applicant filed in support thereof. Both documents were circulated to the members of the Tribunal prior to the hearing.

2. **THE** Application seeks the following orders pending the hearing of the complaint by the Tribunal:
 - 2.1 **PROHIBITING** the publication of any report or account or any matter of any part of any hearing by the Tribunal in any manner in which the applicant is name or identified; and/or

 - 2.2 **PROHIBITING** the publication of the name or any particulars of the affairs including the occupation, place of residence/practice of the application; and/or

 - 2.3 **FURTHER** orders as this Tribunal may deem appropriate.

3. **THE** application is made under Section 106 of the Medical Practitioners Act 1995. Section 106 confers upon the Tribunal's discretionary power to make orders in the terms sought in this application "*where it is satisfied that it is desirable to do so, after having regard to the interests of any person and to the public interest*".

4. **IN** making its decision in this present case, the factors which the Tribunal took into account included the following:

- 4.1** **THE** necessity for the Tribunal to balance the interests of this applicant, the complainants and the public generally.
- 4.2** **IN** this latter respect, the Tribunal is especially mindful of the necessity to ensure that the public interest, and in particular, public safety, is not compromised by the non-disclosure of the identity of practitioners against whom a complaint has been made.
- 4.3** **THESE** factors may assume greater significance in those areas of medical practice involving high risk, or especially vulnerable patients, as is the case in this application. Undoubtedly, disclosure of a complaint especially if accompanied by any adverse comment or speculation about the complaint in advance of the hearing, has the potential to cause patients concern, if not alarm.
- 4.4** **THE** possibility that the patients currently being cared for by the applicant and/or his team, might be caused undue concern and worry is especially pertinent given that the applicant, as a consultant specialist, is often referred difficult cases involving patients who may already be distressed or concerned as a result of complications in their pregnancies, or serious disease.
- 4.5** **HOWEVER**, there is no possibility or indication of any sort present in this case which suggests that the interests, safety and/or wellbeing of patients would be jeopardised by the granting of this present application. It is relevant in this regard that the complainants raise no objection to the granting of the application.

- 4.6** **THE** applicant has a professional reputation which is exceptional in xx, if not nationally. That reputation has been earned by the applicant over some 30 years of practice, during which time the applicant has been involved in many difficult and complex medical cases in an area of practice which is statistically proven to be 'high risk' in terms of adverse events.
- 4.7** **THE** applicant has not previously faced a disciplinary charge, and this present charge is at the lowest end of the scale, being conduct unbecoming. If the charge is ultimately not proven against the applicant, the harm caused to him by the disclosure of the charge may well be disproportionately significant.
- 4.8** **THERE** is the added dimension in this present case of the applicant's considerable involvement and reputation in professional areas of practice unrelated to the subject matter of the complaint. The Tribunal accepts that disclosure of this complaint may cause adverse comment, or prejudice, not merely to the applicant, but to other important work and causes in which he is currently engaged or with which he is associated.
- 5.** **ACCORDINGLY**, the Tribunal is satisfied that in the circumstances which present in this application it is appropriate to grant the application in the terms sought.
- 6.** **THE** Tribunal notes that the orders are to remain in place until the hearing of the complaint. Any application to extend the orders pending the decision of the Tribunal should be made to the Tribunal hearing this complaint.

DATED at Auckland this 17th day of July 1998.

W N Brandon

DEPUTY CHAIR