

Medical Practitioners Disciplinary Tribunal

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

PLEASE NOTE: **DECISION NO:** 92/99/44D
NAME OF PATIENT AND **IN THE MATTER** of the Medical
RESPONDENT DOCTOR Practitioners Act 1995
OR ANY PARTICULARS
OF THEIR AFFAIRS NOT -AND-
FOR PUBLICATION

IN THE MATTER of a charge laid by the
Director of Proceedings
pursuant to Section 102 of
the Act against A medical
practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mr P J Cartwright (Chair)
Dr A M C McCoy, Mr G Searancke, Dr A F N Sutherland,
Dr L F Wilson (Members)
Mr B A Corkill (Legal Assessor)
Ms G J Fraser (Secretary)
Mrs G Rogers (Stenographer)

Hearing held at Auckland on Monday 14 June 1999

APPEARANCES: Ms T W Davis Director of Proceedings

Mr C W James for Dr A.

SUPPLEMENTARY DECISION:

1.1 **THE** Director of Proceedings of the Health & Disability Commissioner charged Dr A that on or about 23 August 1997 while treating a patient, he acted in such a way that amounted to disgraceful conduct in a professional respect, in that he provided services of an inadequate and inappropriate professional standard. Particularised the charge states that Dr A:

(1) Failed to inform his patient that he intended to examine her breasts;

and/or

(2) Failed to obtain his patient's informed consent for a breast examination;

and/or

(3) Touched his patient's breasts in an inappropriate manner;

and/or

(4) Undertook a clinically inadequate breast examination of his patient.

1.2 **THE** Tribunal, by its Decision No. 84/99/44D dated 29 July 1999 and Decision No. 86/99/44D dated 20 August 1999, found Dr A guilty of conduct unbecoming a medical practitioner which reflects adversely on his fitness to practise medicine.

1.3 **THIS** Supplementary Decision issues for the purpose of determining penalties.

- 1.4** **CURRENTLY** Dr A enjoys interim suppression of name, such an order having been made in Decision No. 77/99/44D which issued on 11 June 1999. In the same Decision an order was made for suppression of the complainant's name.
- 1.5** **ON** behalf of Dr A application has been made by Mr James for the interim suppression of name order to be made permanent.
- 1.6** **ON** the advice of Ms Davis it is noted that neither she nor the consumer or the Health & Disability Commissioner would object to the Tribunal making a final order suppressing Dr A's name.
- 1.7** **WE** agree with Mr James, in a case of this nature, such a consensus from all parties supportive of an order for final name suppression, is exceptional.
- 1.8** **ALTHOUGH**, as Mr James has explained, there is a competing public interest element to be addressed in the context of publication of name, we agree that the arguments in favour of publication are outweighed and outbalanced by the inordinately unjust and onerous effects that would accrue not only to Dr A and his family, but to the wider community, should the application be declined. The public interest "*to know*" would come at a substantial price and loss, on the individual facts and circumstances of this case. In our view such price and loss is not justified or appropriate in this case.
- 1.9** **IN** favouring making the interim suppression of Dr A's name final, the Tribunal is mindful of the cautions which were advanced by Mr xx during the course of the character evidence

which he gave on behalf of Dr A. He explained under cross-examination that if Dr A were to be found guilty of some sort of misconduct, and disciplined even at a very minor scale, that publication of his name would have a considerable effect on the xx community. Dr A would be seen as a person who had fallen, and amongst the xx community he would suffer the consequences of that in terms of people losing confidence and trust in him, and patients turning away from him.

1.10 **ADDITIONALLY** we have taken into account the effect which publication of Dr A's name would have on both his wife and the members of his family.

1.11 **CONSIDERABLE** character evidence was adduced which has established to our satisfaction that Dr A is held in very high esteem, both in medical circles and those of the wider xx community in several important areas of influence.

1.12 **PURSUANT** to Section 110 of the Medical Practitioners Act 1995 the Tribunal has the power to order Dr A to pay part or all of the costs and expenses of and incidental to the investigation by the Health & Disability Commissioner and the prosecution by the Director of Proceedings. Ms Davis seeks an order for costs against Dr A.

1.13 **THE** costs that accrue in a fully contested hearing inevitably are greater than those from a guilty plea. In this respect Mr James explained it is relevant to request the Tribunal to bear in mind that on 2 June 1999 he telephoned the Director of Proceedings to explore a real prospect of the matter being resolved without the need for a fully contested hearing if a plea of guilty other than disgraceful conduct was accepted. Apparently the Director of

Proceedings rejected these overtures, she contending that only a plea in respect of disgraceful conduct would be entertained. The Director maintained the charge at that level throughout.

Therefore Mr James asked that these factors be taken into account when considering the proportion of costs to be awarded against Dr A.

1.14 **FINALLY** Mr James submitted there is no utility in imposing conditions on Dr A’s right of practise, because this case is very much “*one off*” with no indication of pattern or propensity for wrong-doing.

2. ORDERS:

2.1 **AFTER** taking into account the submissions made by Mr James and Ms Davis, the Tribunal orders that Dr A be censured, pay a fine of \$2,000.00 and contribute 30% of the costs and expenses of and incidental to the investigation by the Health & Disability Commissioner, the prosecution by the Director of Proceedings and the hearing by the Tribunal.

2.2 **FINALLY** the order for interim suppression of Dr A’s name and any identifying details made in Decision No. 77/99/44D, is made final. For the resolution of any doubt the order for suppression of the complainant’s name in the earlier Decision was intended to be a permanent order.

DATED at Auckland this 11th day of October 1999

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P J Cartwright

Chair

Medical Practitioners Disciplinary Tribunal