Medical Practitioners Disciplinary Tribunal

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NOTE: NAMES OF RESPONDENT AND COMPLAINANTS

NOT FOR PUBLICATION

DECISION NO: 108/99/48D

IN THE MATTER of the Medical Practitioners Act 1995

-AND-

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

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mrs W N Brandon (Chair)

Dr R S J Gellatly, Dr J M McKenzie, Dr A D Stewart,

Mrs H White (Members)

Ms G J Fraser (Secretary)

Ms L Tipene (Stenographer)

Hearing held at Auckland on Wednesday 13 October 1999

APPEARANCES: Ms T W Davis for the Director of Proceedings and Mr M F McClelland

Ms J Gibson for Dr M.

SUPPLEMENTARY DECISION:

THIS supplementary decision follows Decision No. 97/99/48D, which issued on 26 November 1999.

1.1 **IN** Decision No. 97/99/48D a majority finding was made by the Tribunal that Dr M's management and treatment of Mrs A undertaken on 5 March 1997 fell below the standard of a reasonable, competent general practitioner. Specifically, the Tribunal found that did not give due consideration to the fact that Mrs A was pregnant, and that she could be in labour or about to miscarry her baby.

1.2 **THE** Tribunal went on to determine that Dr M's conduct reflected adversely on his fitness to practise medicine and, accordingly, it held that Dr M was guilty of conduct unbecoming a medical practitioner and that conduct reflected adversely on his fitness to practise medicine.

2.0 **ORDERS:**

2.1 **HAVING** advised the parties of that determination, the Tribunal invited submissions as to penalty. Those submissions have now been received and considered by the Tribunal, and it makes the following orders pursuant to Section 110(1) of the Medical Practitioner's Act 1995:

2.2 **THAT** Dr M be censured (S.110(1)(d));

2.3 **THAT** Dr M is not to treat any pregnant women;

2.4 **THAT** Dr M pay $11,205.69 which represents one-third of the costs and expenses of and incidental to the investigation made by the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994 in relation to the subject-matter of the charge and the prosecution of the charge by the Director of Proceedings, together with the hearing by the Tribunal (S.110(1)(f));

2.5 **THAT** the interim orders made prohibiting publication of the names of Dr M and the complainants, Mr and Mrs A, together with all and any identifying particulars are made permanent.

3. REASONS FOR ORDERS:

CENSURE:

3.1 **THE** Tribunal has carefully considered whether or not Dr M's conduct warrants the formal sanction of a censure. Censure customarily follows an adverse finding by the Tribunal against a medical practitioner, but it is not the case that the Tribunal makes an order of censure as a matter of course.

3.2 **IN** this present case, the finding that Dr M is guilty at the lowest end of the continuum of charges is a majority decision; the Chairperson dissenting only in relation to that finding and to the extent that she is satisfied that Dr M is guilty of professional misconduct.

3.3 **HAVING** taken all of the findings made by it into account, and the fact that an order of censure appears not to be contested by either of the parties, the Tribunal is satisfied that a formal order of censure is warranted.

FINE AND COSTS:

3.4 **NEITHER** the Director of Proceedings or Counsel for Dr M has made any submissions to the Tribunal on the issue as to whether or not Dr M's conduct warrants the sanction of a fine, or as to the amount of any such fine. In any event, the Tribunal does not consider that an order pursuant to S.110(1)(e) is either warranted or appropriate in the circumstances of this case.

3.5 **IN** any event, the order that Dr M must pay one-third of the costs of the prosecution and hearing of the charge in the sum of $11,205.69 is not insignificant. In addition, the Tribunal is advised that the matter may not be finally resolved by these proceedings, and that the Director of Proceedings is considering pursuing the matter in the Complaints Review Tribunal.

3.6 **THE** Tribunal has also taken into account the fact that Dr M has not previously faced any disciplinary complaint in his career, now of more than 30 years duration; and there is evidence presented to the Tribunal that he is a very good and well-regarded practitioner with a long period of service in public hospitals in New Zealand.

3.7 **TAKING** all these factors into account, the Tribunal is satisfied that there is no useful purpose or interest to be served by the imposition of a fine.

3.8 **AS** to the matter of costs, as submitted by Dr M's counsel, Ms Gibson, the Tribunal has consistently ordered approximately 30 - 35% of costs in the context of findings of conduct unbecoming, and orders at that level have been approved at appellate level. The Tribunal is satisfied that an order falling squarely in the middle of that range (i.e. one-third/33%), with no fine imposed, is both fair and appropriate.

CONDITIONS ON PRACTICE:

3.9 **BY** virtue of S.110(1)(c), the Tribunal may impose such a condition on Dr M's practice only for a maximum period of 3 years. However, it records that Dr M's undertaking to the Tribunal and to the Medical Council that he will not treat pregnant women is not caveated by any such time limit.

3.10 **IN** light of the Tribunal's findings, and the consequences of Dr M's failure to correctly diagnose that Mrs A was in labour, or about to miscarry her baby, the Tribunal considers that Dr M should voluntarily permanently refrain from treating any pregnant women. In the unlikely event that Dr M does wish to resume treating pregnant women patients of his general practice, or in a locum capacity, then he must undertake a refresher course or otherwise obtain appropriate accreditation from the Medical Council.

PUBLICATION:

3.11 **PRIOR** to the hearing of the charge both parties sought and were granted interim orders prohibiting the publication of the names and any identifying particulars of both the complainants and the respondent. The Director of Proceedings has now made a submission that publication of Dr M's name is appropriate in this case, and would be in the public interest.

3.12 **NO** grounds to support that submission are provided. Ms Gibson for Dr M seeks an order for permanent name suppression, supported by a number of reasons, in particular, Ms Gibson denies that publication is warranted in the public interest. That submission has much to commend it.

3.13 **MOST** relevantly in the Tribunal's view is the fact that Dr M does not normally treat pregnant patients, and he has given the undertakings to that effect already referred to in this Decision. In such circumstances, there are no factors of public safety involved, or any other reason why the general public or current or potential patients should be put on notice of the Tribunal's finding.

3.14 **TO** the extent that the facts and circumstances of this case may serve as a warning to the profession generally to treat symptoms such as reported to Dr M by Mrs A with caution, a permanent prohibition on publication of the identity of the parties, and any other identifying details, would not unduly restrict the educative value of any future publication of the decision. The real and genuine interest to be served in this case is in the facts and circumstances of what occurred, not in the identity of the parties involved.

3.15 **MOREOVER**, given the highly personal nature of the subject matter of the complaint, the complainants were most anxious that they not be identified. There is undoubtedly a risk, even if only minor, that identification of the respondent could lead to the identification of the complainants, and to 'sensational' reporting - that is a risk which the Tribunal considers is not warranted.

3.16 **ALL** things considered, the Tribunal is satisfied that it is desirable that the orders prohibiting publication of the names of the parties, and of any particulars which might lead to their identification should be made permanent.

DATED at Auckland this 23rd day of February 2000

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W N Brandon

Chair

Medical Practitioners Disciplinary Tribunal