

Medical Practitioners Disciplinary Tribunal

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DECISION NO.: 101/99/52D

IN THE MATTER of the MEDICAL PRACTITIONERS

ACT 1995

AND

IN THE MATTER of disciplinary proceedings against

THOMAS RICHARD YOUNG

medical practitioner of Kaitaia

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Wednesday 17 November 1999

PRESENT: Mr G D Pearson - Chair

Dr I D S Civil, Ms S Cole, Dr L Henneveld, Dr B J Trenwith (members)

APPEARANCES: Ms T W Davis, Director of Proceedings

Mr H Waalkens for respondent

Ms G J Fraser - Secretary

(for first part of call only)

DECISION ON THE APPLICATIONS FOR NAME SUPPRESSION

1.1 **THERE** are two applications, the first by the practitioner, **Thomas Richard Young**. That application being for an interim order prohibiting, until the commencement of the hearing of the disciplinary charges that he faces, the publication of his name, or any fact identifying him. In the course of submissions, Dr Young's counsel indicated this application was to extend to information that might identify witnesses who Dr Young may call.

1.2 **DR** Young's application is:

- Declined in respect of the publication of his name, and
- Granted, pending further order, in respect of witnesses he may call.

1.3 **THE** Director of Proceedings applied for an order prohibiting the publication of the name or any fact identifying the complainant/patient **A**, and any witness called by the Director of Proceedings.

1.4 **THE** Director of Proceedings' application is granted, pending further order.

2. DR YOUNG'S APPLICATION:

Grounds for applications and opposition:

2.1 **DR** Young's application was opposed as to publication of the identity of Dr Young, but not in respect of witnesses he may call. The application was made on the grounds that:

- The facts of the case are unusual,

- Any publicity would inevitably result in substantial prejudice to Dr Young and his immediate family,
- There may be prejudice to Dr Young's preparation for hearing, and
- Dr Young was overseas and he had not been able to fully instruct counsel.

2.2 **THERE** was no affidavit supporting Dr Young's application. Dr Young's counsel explained that Dr Young had been representing himself until recently, and had departed for a holiday overseas (which had been arranged for some considerable time). Accordingly, Dr Young had not been able to be contacted to develop the grounds, or provide evidence in support of the application.

2.3 **DR** Young's counsel indicated that certain aspects of the incident giving rise to the charge may be accepted. It is inappropriate to be very specific at this point, having regard to Dr Young's limited contact with his counsel. It is however, necessary to observe that this is not a case where Dr Young is claiming that the subject of the charge is entirely fabrication.

2.4 **DR** Young's counsel developed the ground that there would be prejudice to preparation for the hearing, he referred to his concern at the effect of publicity on potential witnesses. Particularly, "character" type witnesses becoming unwilling to be involved in, a matter that is very public.

2.5 **DR** Young's counsel placed a great deal of emphasis on the fact that the application was of an interim nature only. He said there would be no prejudice in allowing interim suppression,

and that the issue could be reviewed when all the information was before the Tribunal at the hearing.

2.6 **THE** Director of Proceedings opposed the application for suppression of Dr Young's name, referring to:

- The possibility of other complainants presenting themselves as a consequence of publication,
- The complainant is a young person, and her mother on her behalf has opposed suppression of Dr Young's name,
- The elements in respect of which Dr Young apparently acknowledges that there was an incident from which the charge arises.

Reasons for decision:

2.7 **THE** application is to be determined pursuant to s.106(2)(d) of the Medical Practitioners Act 1995. The Tribunal recognises that each application of this kind must be considered on its own merits, considering each factor and the combined weight of the total. There is no presumption that an application of this kind will, or will not, be granted.

2.8 **THE** Tribunal does however recognise, that a practitioner facing a disciplinary charge must make out grounds for suppression of his or her name. That follows from the legislative scheme in which s.106(1) of the Act provides that hearings of the Tribunal will be public, subject to certain exceptions, relevantly, the power to make orders under s.106(2).

- 2.9** **IN** this case, the Tribunal acknowledges that the facts may be unusual, but it is satisfied that the potentially exceptional nature of the facts does not in itself, justify suppression of Dr Young's name. When at least elements of the potentially exceptional facts are accepted to have substance, and Dr Young has not provided evidence that goes to justification or explanation, the alleged facts in this particular case favour publication. This is not a case where the alleged facts would be unusual in the sense of being of minor significance or something of that nature, which might favour suppression.
- 2.10** **FURTHERMORE**, the Tribunal recognises the principle that open hearings provide the opportunity for other complainants (if there are any) to come forward. The Tribunal does however also recognise that when an application is for **interim** suppression of name, that opportunity is deferred rather than necessarily lost.
- 2.11** **ACCORDINGLY**, the Tribunal is satisfied that the potentially unusual facts do not justify departure from the presumption that hearings and the associated procedures will be conducted in public.
- 2.12** **INEVITABLY**, there will be elements of prejudice and discomfort for practitioners and their families in some cases that come before the Tribunal, as a result of the disclosure of the practitioner's identity. In some circumstances, that fact may weigh more heavily in favour of granting the application to suppress publication of the practitioner's name on an interim, or final, basis. In this case, there is simply a bare assertion of prejudice, and there is no evidence presented to the Tribunal of any such circumstances. It is not satisfied that there is anything out

of the ordinary about the circumstances of this case that would justify its granting the application to prohibit publication of Dr Young's identity.

2.13 **ACCORDINGLY**, the Tribunal is satisfied that there is no basis to warrant its displacing the presumption contained in section 106(1) that hearings should be conducted in public, or for it to ignore the very clear direction on the part of Parliament that the "public interest" is best served if medical professional disciplinary proceedings are conducted in public, in as open a manner as possible, taking into account the privacy of the individuals involved.

2.14 **DR** Young's counsel also submitted that the preparation of Dr Young's defence of the charge would suffer prejudice because witnesses of a "character witness" nature might be dissuaded by the possibility of publicity. The Tribunal is not satisfied that such witnesses would be so dissuaded. It is by now a matter of almost common knowledge in the profession and among the public generally that professional disciplinary hearings are conducted in public and therefore that the evidence of witnesses will also be given in public, and may be the subject of public comment or reporting in the news media. However, to the extent that this issue may provide a particular concern for some potential witnesses, at this early pre-hearing stage, the Tribunal is prepared to extend interim suppression for the names and identity of all witnesses pending the commencement of the hearing. At the hearing the issue will be reviewed, at this point it is not finally determined who the witnesses will be for either party. Accordingly, it is not possible to reach any definitive conclusions.

2.15 **THE** Tribunal has considered carefully the fact that Dr Young is overseas, and unable to be contacted. However, Dr Young has had ample opportunity to instruct counsel, and the Tribunal cannot simply assume that Dr Young might have been able to develop more substantial grounds had he made himself available to do so. Accordingly, while giving this factor weight, it cannot justify departure from the principle that there will be publication unless grounds are established for suppression.

2.16 **ACCORDINGLY**, the Tribunal is satisfied that none of the factors advanced justifies suppression of name individually; viewed collectively, the position is the same. The application for suppression of Dr Young's name lacks substance, even taking fully into account that the application is for interim suppression of name only.

2.17 **THE** Tribunal is however satisfied that interim suppression of the names of witnesses to be called is appropriate pending the hearing.

3. THE DIRECTOR OF PROCEEDING'S APPLICATION:

Grounds for applications:

3.1 **COUNSEL** for Dr Young did not oppose this application, but did not consent to it. Accordingly, the Tribunal has considered the application on its merits.

3.2 **THE** grounds in support of the application for suppression of the name and identity of the complainant and other witnesses are principally set out in an affidavit of her mother. The Complainant was xx years of age, at the time of the alleged incident upon which the charge

is based, the allegation being that the events took place on 15 January 1998. The grounds advanced by the complainant's mother may be summarised as:

- The Complainant and her family live in a small community where it is difficult to preserve privacy;
- The Complainant has already been the subject of community pressure in respect of the subject of the charge;
- The Complainant has been distressed, and she is young and vulnerable; and
- The names of other witnesses would lead to the identification of the Complainant.

Reasons for decision:

3.3 SECTION 106(2) of the Act directs the Tribunal to have regard to the privacy of the Complainant, and to the public interest. The Complainant's age, and the circumstances of the community in which she lives are significant factors to be taken into account, and the Tribunal is satisfied that these factors require that her name and identity are not published. To the extent that the identity of any witnesses would lead to the identity of the Complainant, those factors require that their names be suppressed also.

3.4 AS with the witnesses who may be called for Dr Young, there may, or may not, be public interest factors that require suppression of the names and identity of other witnesses who may be called by the Director of Proceedings. As the witness lists, and briefs of evidence, are not finalised for either party at this point the Tribunal considers that the appropriate course is to prohibit publication of the names of all witnesses, excluding Dr Young. The matter will be reconsidered at the hearing.

4. ORDERS

THE Tribunal Orders:

4.1 THE name of the Complainant is suppressed pending further order of this Tribunal;

4.2 THE names of all witnesses called by either party are suppressed pending further order of this Tribunal; **provided** that the name of the practitioner, **Thomas Richard Young** is **not** suppressed;

4.3 THERE shall be no publication of any details that might lead to the identification of the Complainant, or any witness called by either party, **except** the identification of the practitioner, **Thomas Richard Young**, pending further order of this Tribunal.

DATED at Wellington this 26th day of November 1999.

G D Pearson

DEPUTY CHAIR