



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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**PUBLICATION OF
THE NAME OF
THE DOCTOR IS
PROHIBITED** **DECISION NO:** 258/03/105C

IN THE MATTER of the Medical Practitioners Act

1995

-AND-

IN THE MATTER of a charge laid by the Complaints

Assessment Committee pursuant to

Section 93(1)(b) of the Act against R

medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Dr D B Collins QC (Chair)

Dr R S J Gellatly, Dr U Manukulasuriya, Mr G Searancke,

Dr L F Wilson (Members)

Ms G J Fraser (Secretary)

Considered on the papers

APPEARANCES: Ms K P McDonald QC for the Complaints Assessment Committee
("the CAC")

Mr M F McClelland for Dr R.

Introduction

1. Dr R is a xx. On 10 April 2003 a Complaints Assessment Committee ("CAC") charged Dr R with professional misconduct. It is not necessary to explain the charges in this decision. Suffice to say the charges were serious in that they in part alleged Dr R assisted a person practising medicine knowing they had their name struck from the Register of Medical Practitioners in New Zealand.
2. The charges were to be heard in xx. Two weeks were allocated for the hearing. The hearing was to commence on 3 November 2003.
3. On 16 October Ms McDonald QC, counsel for the CAC sought to withdraw the charges. Prior to then Dr R had applied for an order suppressing his name and any matters which could identify him. The application for name suppression was heard by the Tribunal on 6 October. The Tribunal had reached a decision in relation to that application and was in the process of preparing its written decision when it was advised of the application to withdraw the charge.
4. The Tribunal has now considered the application to withdraw the charge and reconsidered its decision concerning the application by Dr R for orders suppressing his name and identifying features.
5. The Tribunal advised the parties of its decision on 29 October and now explains the reasons why it has granted both applications.

Application to withdraw the charge

6. The Tribunal unhesitatingly accepts Ms McDonald QC's explanation that the CAC has incurred considerable difficulty with witnesses. Indications of this were raised by counsel for Dr R during a pre-hearing directions conference held on 13 August. If the CAC is unable to locate and/or properly brief witnesses then it is entirely appropriate that it applies to withdraw the charges as soon as it reasonably can. The Tribunal is grateful for the efforts made by the CAC and Ms McDonald and has no hesitation in granting the application to withdraw the charge.

Name Suppression Application

7. Doctor R's application for orders suppressing his name and identifying features has been made pursuant to s.106(2)(d) Medical Practitioners Act 1995.
8. Section 106(1) emphasises the Tribunal's hearings are to be heard in public. The policy behind that provision is that the Tribunal should hesitate before granting any application to suppress a name of a doctor required to appear before the Tribunal in response to a charge. In determining whether or not to grant an application for name suppression the Tribunal is required to have regard to the interests of:
- 8.1 The practitioner
 - 8.2 Any other person
 - 8.3 The complainant, and in particular their unfettered right to privacy
 - 8.4 The public.
9. The fact a charge has been withdrawn does not in itself justify the granting of an application to suppress the name of the doctor who has been charged.
10. In this case there are three reasons why the Tribunal has granted the application. Those reasons can be very succinctly stated:

10.1 The nature of the charge is such that Dr R is very likely to be subjected to significant adverse publicity if his application is declined.

10.2 It would be unreasonable to subject Dr R to the risk of serious adverse publicity in circumstances where it is obvious no adverse finding can possibly be made against Dr R because the charges have been withdrawn.

10.3 Dr R is facing 16 criminal charges in relation to matters that are linked (albeit tenuously) to the charges laid before the Tribunal. The District Court has granted Dr R interim name suppression in relation to the matters to be heard in the District Court.

11. Were it not for the three factors identified in paragraphs 10.1 to 10.3 of this decision the Tribunal may well have declined Dr R's application.

Conclusion

12. The CAC is granted leave to withdraw the charge.

13. The Tribunal orders that nothing be published which identifies Dr R or the fact that he is a xx in xx.

DATED at Wellington this 11th day of November 2003

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D B Collins QC

Chair

Medical Practitioners Disciplinary Tribunal