MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 164/01/73D

IN THE MATTER of the MEDICAL PRACTITIONERS ACT 1995

AND

IN THE MATTER of disciplinary proceedings against **MURRAY GEORGE WIGGINS** medical practitioner of Hastings

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Wednesday 4 July 2001

PRESENT: Mr G D Pearson - Deputy Chair

Mrs J Courtney, Dr J C Cullen, Dr R S J Gellatly, Dr F McGrath (members)

APPEARANCES: Nil

Decision on the application by the practitioner for name suppression:

1. Dr **Murray George Wiggins**, is a medical practitioner of Hastings, he faces a charge before the Tribunal. The charge is that in 1999 his conduct was conduct unbecoming a medical practitioner, in relation to the diagnosis and treatment of a patient. The essence of the charge relates to an alleged failure to consider breast cancer as a differential diagnosis, or failure to take adequate steps if that was a differential diagnosis. In addition, the charge alleges Dr Wiggins failed to communicate adequately with his patient.

2. Dr Wiggins has applied for interim name suppression. The formal application refers to the following points:

   - Dr Wiggins denies the charge,
   - The alleged offending is at the lower end of the scale,
   - Publicity would cause a detrimental effect and cause damage to Dr Wiggins' reputation and practice, out of keeping with the offending alleged,
   - Publication would have an unreasonable and detrimental effect on Dr Wiggins' family and patients.

3. The grounds for the application and evidence in support are developed in an affidavit sworn by Dr Wiggins. The affidavit refers to Dr Wiggins having been practising for some 21 years, and that this matter is the first complaint he has ever received in respect of management and/or treatment of a patient. Dr Wiggins refers to a number of matters in the affidavit including:

   - The "large amount of publicity which medico-legal matters attract in the media".
   - That Dr Wiggins' has a practice in Hastings at Flaxmere, and he is concerned that publicity would cause stress and worry for patients in the practice.

- Dr Wiggins' children are at local schools, and he is concerned that publicity would adversely affect them.

- Dr Wiggins' wife is a practice nurse who works both in Dr Wiggins' practice and another practice.

- Dr Wiggins has elderly parents, and publicity would cause them distress.

4. There is a specific ground raised in Dr Wiggins' affidavit that requires particular consideration. Dr Wiggins said:

"I am also very worried about the actions of the complainant. [The complainant is the husband of the patient.] He has made aggressive threats against me which I have had to refer to the local police. I am worried that he may embark upon a course of action to damage me as much as he can and that if an order of interim name suppression is not made, ***he may pursue adverse publicity against me in the context of this hearing****."* (emphasis added)

5. The Director of Proceedings opposed the application and pointed out that the Medical Practitioners Act 1995 envisages that a practitioner's name will be published, notwithstanding a potentially *"detrimental effect and damage to [the practitioner's] reputation and practice and members of [the practitioner's family] and [the practitioner's] patients. … this is an inevitable consequence of such proceedings and are not of themselves such that would justify an interim suppression order being made."*

6. The Director of Proceedings submission went on to say:

"If a suppression order were to be made in this case then it is almost inevitable that interim suppression orders will be made in similar cases with the end result that interim suppression will become the norm rather than the exception. Such a situation is not contemplated by the 1995 Act."

7. Counsel for Dr Wiggins responded to the Director of Proceedings' submission. This submission referred to the fact that this Tribunal does make orders for interim name suppression, and contended that publication would in this case be disproportionate to the

gravity of the charge. The submission also emphasised that the order contemplated would not exclude the public from the hearing of the charge, but that Dr Wiggins' name would not be published. The submission also submitted "*the stigma associated with adverse publicity of a charge is seldom eradicated by a subsequent acquittal. This is recognised in* ***M v Police*** *[1991] 8 CRNZ 14, Fisher J."*

Reasons for decision

8. 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.

9. 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).

10. In this case, the likely effects of publicity on Dr Wiggins, his patients, his family and the practices in which Dr Wiggins' wife works are not unusual or exceptional. There is considerable force in the submission for the Director of Proceedings that if suppression were granted in this case, interim name suppression would be the norm rather than the exception.

11. 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, subject to the point discussed in the following paragraph, the circumstances identified are ones that are largely inevitable for practitioner's facing a charge before the Tribunal.

12. The Tribunal has had careful regard to Dr Wiggins' concern that the complainant *"may pursue adverse publicity against me."* If there were to be any question of the news media interviewing the Complainant and publishing allegations in advance of the hearing there would be considerable force in Dr Wiggins' concerns. However, it is appropriate to review the nature of the publicity that can properly be given to Dr Wiggins' circumstances prior to the hearing. The principles that govern publicity prior to the hearing of the charge are the same as those that apply to a person facing a criminal charge. It is important to recognise:

- Prior to the determination of the hearing, the person charged is entitled to the presumption of innocence,
- Evidence is not presented until the hearing of the charge,
- The person charged has no opportunity to answer the allegations until the hearing.

13. It is accordingly well established that it is entirely proper to publish the fact that a person faces a charge, and the nature of the charge. However, it is improper for anyone to publish material suggesting what the outcome of the charge will be, or to prejudge the evidence in support of, or in answer to the charge. Publication of such material is likely to be seen as an attempt to incite prejudice against parties to the proceedings. Such publicity will be seen as an attempt to influence witnesses or the Tribunal, and thereby affect the right to a fair hearing. Publication of such material will leave the publisher potentially guilty of contempt, which can be addressed by the High Court in its inherent jurisdiction. Furthermore, the law relating to defamation and privacy would apply to such publications.

14. Accordingly, while the Tribunal would be very concerned if there was a prospect of the evidence relating to the charge being canvassed and prejudged prior to the hearing, it would be an improper action, and the Tribunal cannot assume that would occur.

15. Accordingly, the Tribunal is satisfied there is no basis to warrant displacing the presumption contained in section 106(1) that hearings should be conducted in public, or for the Tribunal 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.

16. Accordingly, the Tribunal is satisfied that none of the factors advanced justifies suppression of name individually; viewed collectively, the position is the same.

DATED at Wellington this 17th day of July 2001.

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G D Pearson

DEPUTY CHAIR