MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 171/01/79/80/81C

IN THE MATTER of the MEDICAL PRACTITIONERS ACT 1995

AND

IN THE MATTER of disciplinary proceedings against **GRAHAM KEITH PARRY** medical practitioner of Whangarei

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Tuesday 14 August 2001

PRESENT: Mrs W N Brandon - Chair
Mrs J Courtney, Professor W Gillett, Dr M G Laney,
Dr L F Wilson (members)

APPEARANCES: Mr M F McClelland for Complaints Assessment Committee
Mr H Waalkens for respondent
Ms G Fraser - Secretary
(for first part of call only)

DECISION ON THE APPLICATION FOR NAME SUPPRESSION

AND FOR A PRIVATE HEARING

1. These applications arise in the context of three charges of professional misconduct laid against Dr Parry by the Complaints Assessment Committee.

2. In relation to each of the charges, Dr Parry has made applications seeking name suppression and private hearings. All of the applications are identical, and Dr Parry has filed an affidavit in support of his applications, also in the same terms for each of the charges. The applications are made on the grounds that, taking into account the following factors, it is in the interests of justice, and desirable to make the Orders sought. The factors which are stated in support of the applications are:

   (a) Dr Parry denies the charge;

   (b) they are charges of professional misconduct;

   (c) Dr Parry has already suffered considerable media and other publicity (with its consequential damage and stress) in respect of the complaint by the HDC regarding his treatment and management of Mrs Colleen Poutsma, and if these Orders are not made there is a real risk of further publicity of his name and identity, in respect of, and out of proportion to, the issues arising in the present charges;

   (d) further publicity is likely to be such that Dr Parry's ability to prepare for and attend the Tribunal hearing will be prejudiced and/or placed under unreasonable stress;

   (e) any publicity of Dr Parry's name in respect of these matters will inevitably result in harm, embarrassment and unnecessary stress to him and his immediate family, including his children and his partner;

   (f) any such publicity will cause (or risk) harm to Dr Parry's ability to enjoy life without the harassment of further media attention.

3. The grounds for the applications are further developed in an affidavit provided by Dr Parry. The affidavit refers to:

- The events giving rise to the present charges.
- The *Poutsma* case, and the outcome of Dr Parry's appeal to the District Court permitting him to practise in the areas of obstetrics and ultrasound.
- His desire to recommence practice within the conditions specified by the District Court.
- The huge amount of publicity surrounding the *Poutsma* case.
- The publicity (largely adverse) in respect of Dr Parry in the print, television and radio media and his alarm at the level of misreporting.
- Support he has received from members of the community, colleagues and the like.
- His feeling that if the hearings of these charges are not held in private and his name not suppressed he would be unlikely to attend the hearings, notwithstanding his desire to be present and be heard.
- The effect of the publicity to date on his ability to find employment.
- Impacts of the further publicity on his ability to prepare his defence of the present charges.
- His concerns for his family and his partner.
- The extraordinary circumstances relating to the hearing of the charge relating to his care and treatment of Mrs Poutsma makes his circumstances unusual in terms of other cases considered by the Tribunal.

4. The Complaints Assessment Committee opposed the applications. The grounds of opposition were as follows:

(a) None of the complainants wish to have their evidence heard in private and consider that the hearings should be conducted in public.

(b) Section 106(1) of the Medical Practitioners Act 1995 ("the Act") clearly envisages that the Tribunal's inquiry into charges such as have been laid should proceed in public and this inevitably means that the practitioner's name will be published.

(c) The fact that Dr Parry denies the charges and that the charge is not at the most serious level of offending, are not sufficient grounds in themselves to warrant an order for suppression or a private hearing.

(d) In any disciplinary hearing publishing a practitioner's name may cause detrimental effect and damage to his or her reputation and to members of their family, but these are not inevitable consequences of such proceedings and are not of themselves such that would justify an interim suppression order being made in this case.

(e) There is significant public interest in the hearing of the charges.

(f) The media coverage to date demonstrates the public interest in the issues which were the subject of the charge relating to Mrs Poutsma and the likely public interest in the charges presently before the Tribunal.

5. On behalf of the Complaints Assessment Committee, Mr McClelland, referred to a recent decision of the Tribunal, *Wiggins* (Decision 164/01/73D) in which the Tribunal held that it is well established that it is entirely proper to publish the fact that a person faces a professional disciplinary charge and the nature of the charge. However, no person is permitted to publish any material which might suggest what the outcome of the charge will be, or to pre-judge the evidence in support of, or in answer to the charge. In the event any such publication was made, then Dr Parry, as does any practitioner, has his remedies either with the Press Association, the Broadcasting Standards Authority or under the laws of defamation.

6. The fact that further charges have been presented to the Tribunal, and the details of those charges, is information that the public is entitled to and it should receive. The degree of publicity which there has been to date, and which these charges may or may not attract, cannot be grounds for suppressing details of the charges and the hearings themselves. Different cases will attract different degrees of publicity; this reflects the level of public interest in any particular matter and can never support an argument for suppression. The level of publicity is an entirely subjective assessment, and is not relevant to the argument for suppression, either of Dr Parry's name, or of information relating to the charges generally.

7. Mr McClelland also submitted that it is relevant that a recent article published in the *North & South* magazine, written by a journalist who was a witness on behalf of Dr Parry at the Poutsma hearing, received a great deal of publicity and could not have been written without Dr Parry's knowledge and willing participation, as well as that of his counsel. It is difficult, Mr McClelland stated, to reconcile this with Dr Parry's claim (which pre-dates the article) that there has been and will be excessive publicity or misreporting of these present charges.

8. Mr McClelland also submitted that the fact that further publicity may make it difficult for Dr Parry to obtain employment is not a factor relevant to determining whether or not the matter should be heard in private. It is in the public interest that full details of the present charges against Dr Parry and the outcome of the disciplinary inquiry be made public so that any prospective employer and more importantly, any prospective patient, can make an informed decision. It is not in the public interest to conceal such information from the public.

9. Mr Waalkens, in making submissions in support of the applications, also referred to Dr Parry's concern that he may be unable to engage an expert to give evidence in support of his defence at the hearings of the charges, because of the publicity and reluctance on the part of other practitioners to prepare and give evidence in a case that is likely to be highly publicised. Dr Parry is concerned that he will not be afforded a reasonable opportunity to be fairly heard if there is "a blaze of publicity" about the hearings.

10. Mr McClelland submitted that "*This cannot be right. The criminal jury system operates often in instances of extreme publicity and there is no reason at all to*

suggest that the Tribunal and its processes could not operate in such a way as to afford Dr Parry a full and fair hearing."

11. In any event, the Tribunal has a wide discretion to ensure that any media coverage does not interfere with Dr Parry's right to a fair hearing.

12. Finally, Mr McClelland submitted that there is currently a high level of concern in the Northland community about the standard of healthcare available to them. This concern is reflected in the media attention given to the Cull Report, and the Select Committee investigation, which inquiry is to proceed simultaneously with the hearing of these present charges.

13. If the media is able to report the hearings of the present charges in full, the Northland community may be reassured about standards of healthcare to the extent that the charges are limited to Dr Parry's conduct and do not reflect any wider problems within the local health sector.

The Decision

14. Having carefully considered all of these submissions made to it, the Tribunal has determined that the application for name suppression is not granted, but the application for a private hearing will be granted, and appropriate Orders made.

Reasons for decision

15. The Tribunal carefully considered all of the submissions made to it in the context of s.106 of the Act and the legislative scheme in which s.106(1) of the Act provides that hearings of the Tribunal will be public, unless the Tribunal is satisfied that it is desirable to make any of the orders provided for in s.106(2), after having regard to the interests of any person (without limitation) and to the public interest. When considering applications for name suppression, or for a hearing in private, the Tribunal must exercise its discretion by balancing the practitioner's interests with those of the complainant, the Complaints Assessment Committee, and the public interest generally.

16. The Tribunal has consistently taken the approach that, while the interests of an applicant/practitioner are matters which it can properly take into account when balancing the competing interests arising in the context of applications made under s.106, such interests cannot determine the matter because there is unlikely to be any case in which a practitioner's reputation or other personal or commercial interests are not at risk simply by virtue of the fact that he or she is facing disciplinary charges.

17. The Tribunal must weigh the competing interests of the practitioner, his or her family or wider interests, the interests of the complainant, the public interest defined variously as residing in the principle of open justice, the public's expectations that the disciplinary process will be accountable and transparent, the importance of freedom of speech and the media's right to report court proceedings fairly of interest to the public, and the interests of any other person.

18. In deciding to grant the application for a private hearing, the Tribunal has been mindful of the fact that, in enacting section 106(1) in the terms that it did, Parliament intended that all hearings of the Tribunal should be in public. It is relevant in this regard that even in section 107 of the Act, which permits complainants to give evidence of an intimate or distressing nature, or in relation to any matter of a sexual nature, in private, the Act permits "*any accredited news media reporter*" to be present, presumably to enable fair reporting of the proceedings subject to any Orders which may be made to protect the complainant's identity.

19. In this present context, the latter consideration does not apply, as all of the complainants have indicated that they are content for the hearings of the charges to be held in public. However, it is a fact that there is a high degree of public interest in complaints made against Dr Parry, and as a consequence, in the hearing of the charges presented to the Tribunal.

20. It is also fair comment that Dr Parry has himself willingly participated in the 'blaze of publicity' surrounding the *Poutsma* case. However, it is also now known that a Select Committee inquiry is to proceed, and will in fact be carried on simultaneously with the Tribunal's hearings.

21. In the circumstances, it is the Tribunal's view that there is some potential for all of these various inquiries to become confused in the public's mind as reports from the separate processes become intermingled and simultaneously reported.

22. The Tribunal has therefore come to the conclusion that the fairest way for it to carry out its task of hearing the charges presented to it is to permit reporting of the fact that charges have been laid; the number of charges laid; the fact that all of the charges are charges of professional misconduct and they all relate to Dr Parry's gynaecological practice. That would also allow reporting of the fact that none of the charges presently laid in the Tribunal relate to Dr Parry's obstetrics or ultrasound practice.

23. The Tribunal has proceeded on the basis that it is appropriate for it to differentiate between matters which are of legitimate public interest, and matters which are simply of interest to the public. There is, the Tribunal has concluded, legitimate public interest in these matters. Quite apart from the merits, the Tribunal considers that it would be impractical and ultimately unhelpful for it to grant the application for name suppression given that the Select Committee inquiry is about to commence.

24. In the context of that inquiry, all women who have concerns or complaints regarding Dr Parry's professional practice may wish to make their concerns or complaints known to the Select Committee. The complainants may be unable to do so if the Tribunal was to grant the application for name suppression.

25. Dr Parry himself, in his affidavit, has referred to discussions he has had with a potential employer, and to the fact that he is continuing to seek employment. In the event that the Tribunal was to grant the Order for name suppression then, strictly speaking, Dr Parry himself would be prevented from disclosing the charges, and their general nature to any potential employer, and any potential employer would be prevented from checking any information given to them by Dr Parry.

26. The Medical Council and the Tribunal, and indeed Dr Parry himself, may all receive requests for information from the Select Committee, all of which will need to be considered as and when they are made, and responded to appropriately.

27. Taking into account all of these practical considerations, together with the relevant legal principles applicable in every such application, the Tribunal considers that there is no basis upon which it should order that Dr Parry's name should be suppressed and it would not be in the public interest to do so.

28. However, the Tribunal considers that, in all the circumstances, it is appropriate that the hearings of the charges proceed in private.

29. The Tribunal considers that the public interest in the charges would be appropriately acknowledged by disclosure of the fact of the charges and what they involve in general terms. Further, the Tribunal's decisions will ultimately be available to the public, and to the news media for reporting and comment.

30. The subject matter of the charges, involving as they do complaints arising in the context of Dr Parry's gynaecological practice, will require the disclosure of the complainants' personal health information at the hearings. In light of that, the Tribunal considers that there is likely to be very little, if any, legitimate public interest in the detailed evidence to be presented at the hearings of the charges.

31. Further, Dr Parry is entitled to the presumption of innocence and, given the publicity which is likely to surround the Select Committee inquiry (which publicity may arise in relation to "complaints" about Dr Parry's practice rather than being restricted to "charges", which the Tribunal is concerned with) there is a risk that the reporting of the hearing of the charges will become confused and/or unbalanced as a result of the simultaneous reporting of the Select Committee inquiry.

32. The Tribunal is also very mindful of the need to keep the hearings of the charges separate from the Select Committee's inquiry. The purposes and processes of each are very different.

33. Finally, the Tribunal has also taken into account that none of the charges, in themselves, either in terms of the level of the charge (professional misconduct) or their subject matter, are extraordinary in the context of such charges generally. In the normal scheme of things, the level of publicity that might be anticipated to accompany the hearing of such charges

would be considerably less than might eventuate simply because they relate to Dr Parry. There can be no doubt that the publicity surrounding the *Poutsma* case and the Select Committee inquiry will result in a degree of reporting and publicity about these charges that would be out of proportion to that which could normally be expected.

34. The Tribunal emphasises that it does not consider that granting the application for a hearing in private unreasonably inhibits or prevents the reasonable disclosure of information fairly of public interest, especially in circumstances where it has declined an application for name suppression in order to permit disclosure of the information which it considers reasonably and fairly should be in the public domain.

Orders

35. The Tribunal orders as follows:

(a) That the application by Dr Parry for an order that the hearing of this matter be in private is granted; and

(b) The application by Dr Parry for an interim order prohibiting, until further order of this Tribunal (and thereafter as this Tribunal might direct) the publication of his name, or any fact identifying him is dismissed.

DATED at Wellington this 27th day of August 2001.

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W N Brandon

CHAIR