



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 202/01/86D

IN THE MATTER of the **MEDICAL**
PRACTITIONERS ACT 1995

AND

IN THE MATTER of disciplinary proceedings against
BODIABADUGE CAMILLUS
LEONARD ANNESLEY
PERERA medical practitioner of
Melbourne, Australia

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference at 7.00 pm on Tuesday 28 May 2002

PRESENT: Miss S M Moran - Chair

Mr P Budden, Dr L Ding, Dr F McGrath, Dr L F Wilson (members)

APPEARANCES: Ms G Fraser - Secretary

Mr H Waalkens for respondent (stated he had nothing further to add
and left conference within the opening few minutes)

(for first part of call only)

COUNSEL: Ms M McDowell, Director of Proceedings

**Decision on Application of Dr Perera for Re-Consideration of Decision of 11 April 2002
Declining Interim Name Suppression**

1. On 19 December 2001 Dr Perera made application for interim name suppression.
2. On 15 February 2002 Dr Perera swore an Affidavit in support of his application.
3. Dr Perera's Affidavit contained several grounds upon which he relied including:
 - 3.1 He denied each of the particulars of the charge.
 - 3.2 He considered publicity would harm his family, in particular, his cousin Dr George Perera a General Practitioner of Whangarei.
 - 3.3 He considered his own practice would suffer notwithstanding he was now working in Melbourne.
 - 3.4 Over the last 30 years he had no previous convictions and never had any previous disciplinary hearings.
 - 3.5 He considered it would have an adverse effect on the mental health of his youngest son.
 - 3.6 **Not for publication by order of the Tribunal.**
4. On 14 March 2002 the application was heard by the Tribunal (presided over by a different Chair).

5. On 15 March 2002 the Director of Proceedings filed further submissions referring to earlier publicity concerning this matter and in which Dr Perera was identified. That publicity comprised newspaper articles published in the Northern Advocate (which circulates in Whangarei) on 17 and 18 March 2000, in the New Zealand Herald on 18 March 2000 and in the Wanganui Chronicle on 22 March 2000.
6. On 11 April 2002 the Tribunal issued a decision declining the application for interim name suppression. The Tribunal did not accept that there were grounds for granting such order in this case.
7. When dealing with the issue of Dr Perera's son, the Tribunal stated that it assumed for the purposes of that application, and in the absence of any submission to the contrary by Dr Perera's Counsel, that Dr Perera's son resided with him in Melbourne. In consequence it did not consider that there was a great risk that information would be disseminated freely in Melbourne and that Dr Perera was able therefore to protect his son from any information if that was his wish.
8. However, the Tribunal did make an interim order prohibiting the publication of Dr Perera's name for seven days from the date of that decision to enable him to take advice regarding his right to appeal, and to seek interim orders from the District Court pending the hearing of any such appeal.
9. No appeal was filed and the time for doing so has expired. The decision was then placed on the Tribunal's website which can be accessed by any member of the public.
10. On 20 May 2002 the Secretary of the Tribunal received a letter from a Ms Garvey, on behalf of Counsel for Dr Perera. The letter raised matters regarding the mental health status of Dr Perera's son and asked that the letter be put before the Tribunal for re-consideration of the decision on interim name suppression. She specifically asked she be advised if it were necessary for a fresh application to be made.

11. The Secretary of the Tribunal sent a copy of the letter to the Director of Proceedings who replied the same day submitting:
 - 11.1 The information which Dr Perera wanted to place before the Tribunal had been readily available to him at the time of the original interim name suppression application;
 - 11.2 While Dr Perera's original Affidavit sought to rely on his son's psychiatric condition as one of the grounds for suppression, it failed to address the details since outlined in Ms Garvey's letter; and
 - 11.3 The information was not therefore "fresh" in the sense usually required for an appeal or for re-consideration of the original application.

12. The Tribunal then issued a minute that same day to the following effect:
 - 12.1 If the matter were to be considered further by the Tribunal, a formal application by Dr Perera and supporting evidence would be required.
 - 12.2 Any application and any supporting Affidavit and submissions should be filed by noon 23 May 2002.
 - 12.3 Any evidence and submissions in reply, from the Director of Proceedings, should be filed by noon 27 May 2002.
 - 12.4 A telephone conference with the Tribunal would take place at 7.00 pm on Tuesday 28 March 2002.

13. On 24 May 2002 Mr Waalken's office forwarded a further letter to the Secretary of the Tribunal regarding Dr Perera's son.

14. **Not for publication by order of the Tribunal.**

15. **Not for publication by order of the Tribunal.**
16. The letter also recorded Mr Waalkens understood from Ms Jackson that Dr Perera's son proposed to be present at his father's disciplinary hearing. Mr Waalkens, while acknowledging he was not a Psychiatrist, then made some observations about what he thought the son's particular disability might be and how publicity might affect it.
17. Mr Waalkens also referred to recent publicity (last week) in the Northern Advocate and in a Wellington newspaper which identified Dr Perera facing a disciplinary hearing next week but apparently incorrectly reported the nature of the charge.
18. On 24 May 2002 the Director of Proceedings responded to Mr Waalkens letter. She stated that, in the circumstances, she did not oppose the Tribunal re-considering its earlier decision on the question of suppression. She noted that Mr Waalkens was hoping to receive a psychiatric report relating to the mental health status of Dr Perera's son and that if such a report were forthcoming then she would want to make submissions on it. She stated that in the absence of such report she did not wish to make any submissions or appear on the application. In her view it was a matter for the Tribunal to assess the content and weight of Mr Waalkens' letter and the usual weighting of privacy versus public interests. She stated that such interests had already been largely addressed in her submissions filed in respect of the original application on which she relied.
19. At the time that the Tribunal heard the application no further formal application or any supporting Affidavit had been filed as directed. The only information before the Tribunal was the letter signed on Mr Waalkens' behalf referring to the telephone communication he had had with Ms Jackson. Such as it is, the information it provides is, in essence, third hand. There has been no report received from the person in the best position to provide the relevant information, namely the Psychiatrist responsible for Dr Perera's son.
20. Mr Waalkens has informed the Tribunal that Dr Perera's son proposes to be present at his father's disciplinary hearing commencing on 4 June next. In his sworn evidence to support the earlier application Dr Perera had stated that he had been particularly concerned to

protect his son from learning about this case because of his son's condition. It would seem therefore that circumstances have changed and that his son has since been informed of the case and wishes to be present at it. Presumably, the basis for seeking the order for suppression has also changed.

21. Whatever grounds are now being advanced, the position is that, currently there is no formal application (as directed), no reliable evidence in any verifiable form regarding the mental health status of Dr Perera's son, and no expert opinion on the potential adverse effect of any publicity upon him. The position is not substantially different from that when the matter was heard before the Tribunal on 14 March 2002.
22. In those circumstances, having re-considered the matter, the Tribunal is not persuaded there is any proper basis for reviewing its earlier decision and the application for interim name suppression (if such it be) is refused.

Orders

23. However, to enable Dr Perera to take advice and any further steps he may consider appropriate regarding this decision, the Tribunal makes an interim order prohibiting publication of his name for 48 hours from 5pm today.
24. The Tribunal also makes a permanent order suppressing publication of paragraphs 3.6, 14 and 15 of this decision, and directs that the balance of the decision should not be placed on the Tribunal's website before 5pm, Friday 31 May 2002.

DATED at Wellington this 29th day of May 2002

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Sandra Moran

Deputy Chair

Medical Practitioners Disciplinary Tribunal