MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 209/02/92C

IN THE MATTER of the MEDICAL PRACTITIONERS ACT 1995

AND

IN THE MATTER of disciplinary proceedings against **IAN SCOTT LITTLE** medical practitioner of Christchurch

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Thursday 8 August 2002

MEMBERS: Mrs W N Brandon - Chair

Mrs J Courtney, Dr C P Malpass, Dr J M McKenzie,

Dr L F Wilson

APPEARANCES: Mr M F McClelland for Complaints Assessment Committee

Mr C W James for respondent

Ms K L Davies - Hearing Officer

(for first part of call only)

Decision on the application for Interim Name Suppression

The Charge

1. The charges arise out of Dr Little's conviction in the District Court in Christchurch in February 2000 and in the High Court in Christchurch in August 2001 of offences punishable by imprisonment for a term of 3 months or longer and the circumstances of that offence reflect adversely on his fitness to practice medicine.

2. The hearing of the Charge was scheduled to take place on 15 August 2002 but has now been set down to be heard on 5 September 2002. Notice of the Charge and the date of hearing was forwarded to Dr Little on 29 May 2002. Dr Little has advised the Tribunal that he does not intend to defend the Charge.

The Applications

3. By application dated 3 July 2002 an order prohibiting the publication of his name or any details leading to his identifying details is sought on behalf of Dr Little. The application was made on the grounds that such an order was desirable having regard to the interests of Dr Little, his family, his practice and the practice of appearance medicine in general.

Submission by Dr Little

4. Dr Little provided the Tribunal with a written affidavit in support of his application prior to the hearing. In his affidavit, Dr Little set out his concerns that publication of his name and professional status would cause harm to the public's opinion of appearance medicine, and harm to his mental health and personal business/practice.

5. He also has concerns regarding the welfare of his staff and his children. For example, if his practice was adversely affected, and also because his children are vulnerable to adverse comment about him and questioning about the case giving rise to this charge.

6. Dr Little advised the Tribunal that he had found the media reporting at the time, especially television, to be 'sensational' and that the television media appear to seize on every opportunity to replay footage taken at the time. He and his family had been subjected to

"continual" adverse and sensational reporting in the three years since the events giving rise to the charge occurred and he sought to break this continuity of reportage.

7. Dr Little acknowledged that his actions which led to his convictions caused serious harm and indicated his intention to enter only a plea of mitigation at the substantive hearing. Dr Little submitted that he was in effect seeking suppression of this case to allow him the opportunity to address the charge in person before the Tribunal and to be available for questioning at the hearing of the Charge.

8. Dr Little said that he did not wish to be seen as either lacking insight or shirking responsibility for his mistakes. However he had had three years to reflect on what had occurred and how he could adjust his behaviour and conduct to ensure patient safety. There was no benefit to the public served by publication in terms of 'flushing out' any similar incidents.

Submissions on behalf of CAC

9. Mr McClelland advised the Tribunal that the CAC opposed Dr Little's application. It was submitted on behalf of the CAC that the presumption in the Act was that hearings of the Tribunal should be held in public unless the Tribunal was satisfied that the circumstances of the case required otherwise. In this case the public interest lay with the Tribunal maintaining open and public proceedings and he submitted that Dr Little is unlikely to suffer any new prejudice from reporting of the Tribunal proceedings.

10. Mr McClelland submitted that the statutory presumption against name suppression should be upheld as the interests of Dr Little and his family do not outweigh the public interest in open and public proceedings.

11. Furthermore, it was submitted that Dr Little is unlikely to suffer any new or additional unwanted attention beyond that publicity which he received at the time of his criminal convictions. The CAC did not wish to gloss over Dr Little's concerns, but these were inadequate to displace the presumption in favour of open proceedings and against name suppression. Mr McClelland submitted that:

> *"The claim that the profession as a whole is damaged by publicising disciplinary proceedings is one that could be made by every practitioner appearing before the Tribunal. This submission runs contrary to the policy of the Medical Practitioners Act and the interest of patients generally. The risk of harm to the profession itself lies more in suppressing details. In particular, the public's confidence in and respect of the medical profession is based in no small part on the existence of safeguards under the Medical Practitioners Act which ensure the competence and discipline of practitioners. It is not enough that these safeguards are enforced; they must be seen to be enforced. Patients are more likely to retain confidence in a profession that openly and publicly investigates incidents of poor practice rather than a system which seeks to cover them in secrecy. It was this concern that led to the change in policy for disciplinary proceedings under the 1995 Act."*

12. It was also relevant that Dr Little was not granted name suppression by either the District Court or High Court at the time the criminal charges were dealt with. The charge does not involve any new allegations, and all of the matters before the Tribunal relate solely to Dr Little's conviction.

13. In sentencing Dr Little, the Sentencing Judge referred to the likelihood that Dr Little would face disciplinary proceedings. These were comments made in open court.

14. Finally, Mr McClelland noted that Dr Little had taken active steps to court publicity before and during the events that culminated in Ms Steven's death. The procedure, as a result of which Ms Stevens died, was attended by a photographer from the 'New Idea' women's magazine and Dr Little had also appeared on the Holmes programme "extolling the virtues of the Exoderm procedure: refer William Young J's sentencing remarks, paras [13], to [16], [26] and [29]".

Decision

15. For the reasons that follow, the Tribunal is satisfied that the application should be dismissed. The Tribunal's decision is unanimous.

16. As stated on all such occasions, the Tribunal's task when deciding whether or not to grant such applications is to balance the competing interests of the practitioner, and any other person. Section 106(1) states that *"every hearing of the Tribunal shall be heard in*

public". However, pursuant to Section 106(2) the Tribunal may, "*where the Tribunal is satisfied that it is desirable to do so, after having regard to the interests of any person …and to the public interest, it may order that (a) the whole or any part of the hearing shall be held in private…(d) prohibiting the publication of the name, or any particulars of the affairs, of any person*".

17. The Tribunal has consistently taken the approach that it must balance 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 expectation of the accountability and transparency of the disciplinary process, 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. That is the approach it has also taken on this occasion. While the Tribunal has a good deal of sympathy for Dr Little and his family as to the level of media attention that he has received to-date, it is not satisfied that any of the matters advanced in support of the application are sufficient, either on their own or collectively, to justify the granting of the orders sought. It is the Tribunal's unanimous view that, on balance, it is not persuaded that it is desirable to make the interim orders sought.

19. In all the circumstances, the Tribunal is satisfied that in matters of this sort the public are entitled to expect that conduct by a medical practitioner which resulted in a criminal conviction will receive the scrutiny of the professional disciplinary process, that the process has been invoked and that it will run its course; that expectation is of course, reflected in the comments made by the Court at Dr Little's sentencing.

20. Therefore, and notwithstanding that this matter has now received a good deal of publicity over the three years since Ms Steven's death, the Tribunal is satisfied that the factors advanced in support of the application are not sufficient to outweigh the public interest generally, or to displace Parliament's clear intention that professional disciplinary proceedings should be held in public.

Orders

21. The Tribunal orders as follows:

(a) that the application for non-publication of his name and any identifying details made on behalf of Dr Little is dismissed.

DATED at Wellington this 23rd day of August 2002

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W N Brandon

Chair

Medical Practitioners Disciplinary Tribunal