



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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**NB: PUBLICATION
OF THE NAME OF
THE PATIENT AND
ANY DETAILS WHICH
MAY LEAD TO THE
PATIENT'S
IDENTIFICATION
IS PROHIBITED**

DECISION NO.: 217/02/95C

IN THE MATTER

of the MEDICAL

PRACTITIONERS ACT 1995

AND

IN THE MATTER

of a charge laid by a Complaints
Assessment Committee against C
medical practitioner of xx

HEARING:

At the hearing of the application for name suppression on 4 November
2002 the parties agreed that the Tribunal consider the application and
determine it on the basis of the parties' written evidence and submissions.

APPEARANCES:

Mr C J Lange for a Complaints Assessment Committee

Mr H Waalkens for respondent

Ms G J Fraser - Secretary

(for the first part)

TRIBUNAL:

Dr D B Collins QC - Chair

Dr L Ding, Dr R S J Gellatly, Dr A R G Humphrey, Mrs H White

(members)

Application

1. Following the hearing of Dr C's application for name suppression on 4 November the Tribunal received an application from counsel for the Complaints Assessment Committee for an order suppressing publication of the name of the complainant, Ms A. That application was received on 11 November.
2. The grounds for the application are based on the concern that publication of the complainant's name would be a substantial intrusion into her privacy and contrary to public interest.

The Charge

3. The charge against Dr C is that he engaged in a sexual relationship with the complainant when she was his patient or had been his patient. The charge also alleges Dr C supplied the complainant with illicit drugs principally, marijuana and cocaine. The allegations relate to 1985 when the complainant was 16 years old.

Principles Applicable to Name Suppression Application

4. In Order No. 216/02/95C the Tribunal explained in detail the criteria it must take into account when considering an application for name suppression on behalf of any person. Those principles need not be reiterated in this Order.
5. Suffice to say that the key statutory provisions relating to the complainant's application can be found in s.106(2)(d) Medical Practitioners Act 1995. That subsection provides:

“Where the Tribunal is satisfied that it is desirable to do so, after having regard to the interests of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make one or more of the following orders: ...

(d) ... an order prohibiting the publication of the name, or any particulars of the affairs, of any person.

Complainant's Interests

6. Section 106(2) Medical Practitioners Act 1995 emphasises the unfettered requirement that the privacy of a complainant be honoured when considering an application to suppress the name or any particulars of the affairs of the complainant.
7. The hearing of the charge clearly involves an inquiry into evidence of a sexual and/or intimate nature involving the complainant. It is impossible to conceive how the charge can be heard without there being disclosure of very private information about the complainant. Parliament has clearly stated in s.106(2) that the Tribunal must preserve the privacy of a complainant when considering an application to suppress the name of a complainant. Parliament's intentions would not be honoured if the Tribunal were to decline the application filed on behalf of the complainant in this case.
8. A further factor which necessitates the granting of the application can be found in s.107 Medical Practitioners Act 1995 which provides special protections for complainants giving oral evidence before the Tribunal where the charge relates to or involves:
 - Any matter of a sexual nature; or
 - Any matter that may require or result in a complainant giving evidence of matters of an intimate or distressing nature.

The special protections for complainants set out in s.107 permit complainants to give their oral evidence to the Tribunal in private.

9. Section 107 Medical Practitioners Act 1995 is confined to the process of giving oral evidence before the Tribunal. Parliament's clear intention in enacting s.107 was to minimise the distress complainants suffer when giving evidence by allowing them to give evidence in private when their evidence is of a sexual, intimate or distressing nature.
10. Some of the objectives of s.107 would be frustrated if written evidence of a sexual, intimate or distressing nature involving the complainant were publicly linked with the complainant. The objectives of s.106(2)(d) and s.107 clearly involve preserving the

privacy of a complainant required to give evidence of a sexual, intimate or distressing nature to the Tribunal. That objective can best be achieved by suppressing the name and any details that could publicly identify the complainant in this case.

Practitioner’s Interests

11. Doctor C has advised that he “neither supports nor opposes the application by the complainant”. However he also says he does not object to the complainant’s name being suppressed provided his name is suppressed. Even if Dr C were to oppose the complainant’s application it is very difficult to see how his interests could outweigh those of the complainant in relation to this application.

Public Interest

12. The public interest concerns which the Tribunal must take into account when exercising its discretion under s.106(2) include the desirability of ensuring complainants are confident that their privacy is likely to be assured if they give evidence before the Tribunal. If complainants did not have this confidence there is a real risk some complainants would not lay complaints or give evidence. That in turn would seriously erode the Tribunal’s function as a regulator of medical professional standards.

Decision of the Tribunal

13. The Tribunal is satisfied the interests of the complainant and the public interest considerations referred to in the preceding paragraph overwhelmingly lead to the conclusion that the complainant’s name should be suppressed. The Tribunal also orders suppression of any other details which could in any way lead to the public identification of the complainant.

DATED at Wellington this 26th day of November 2002

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D B Collins QC
Chair
Medical Practitioners Disciplinary Tribunal