

Medical Practitioners Disciplinary Tribunal

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DECISION NO.: 23/97/16D

IN THE MATTER of Section 104 of the Medical
Practitioners Act 1995

AND

IN THE MATTER of disciplinary proceedings against N
medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Tuesday 23 December 1997

PRESENT: Mr P J Cartwright - Chairperson
Dr R A Cartwright, Dr I D S Civil, Dr M-J P Reid,
Mrs H White (Members)

DECISION ON APPLICATION FOR INTERIM SUSPENSION OF REGISTRATION:

- 1.1 THE** Director of Proceedings has charged Dr N with disgraceful conduct in a professional respect. The charge is that Dr N's management and treatment of a female patient was inappropriate in a number of respects. Specifically Dr N is charged with entering into a sexual relationship with his patient between November 1996 and March 1997. The Director of Proceedings has characterised the relationship between Dr N and his patient as a form of sexual abuse in the patient doctor relationship amounting to sexual violation. The charge is also that Dr N did not provide his patient with appropriate medical services following her two suicide attempts. The charge of disgraceful conduct in a professional respect is to be heard before the Medical Practitioners Disciplinary Tribunal on Wednesday 11 February 1998.
- 1.2 THE** Director of Proceedings has recommended to the Tribunal that pending determination of the charge, the registration of Dr N be suspended pursuant to Section 104 of the Medical Practitioners Act 1995.
- 1.3 RELEVANTLY** summarised Section 104 of the Act provides that at any time after notice of disciplinary proceedings have been given to a medical practitioner, the Tribunal may, if it is satisfied that it is necessary or desirable to do so having regard to the need to protect the health or safety of members of the public, make an order that, until the disciplinary proceedings in respect of which that Notice was issued have been determined, the registration of that medical practitioner be suspended.

1.4 SUB-SECTION 3 of Section 104 provides that the Tribunal shall not be obliged to give any notice to a medical practitioner that it intends to make an interim suspension of registration order.

Nonetheless notice to this effect was given to Dr N on 19 December 1997. The background to the application for interim suspension by the Director of Proceedings is that the complainant believes that Dr N is continuing to practise medicine. Apparently he was seen at a recent mountain biking event with his medical bag. It is considered possible that he had been tending to participants in the race.

1.5 THE Director of Proceedings has explained that the allegations made against Dr N are serious and if established will almost certainly lead to him being removed from the Register of medical practitioners.

1.6 THE background to the charge is also relevant. The Health and Disability Commissioner (the HDC) first wrote to Dr N informing him of the complaint made against him by his patient on 3 June 1997. Dr N promptly responded on 18 June 1997. Copies of those letters are before the Tribunal. In his letter of response to the HDC Dr N acknowledged:

"I am embarrassed and deeply ashamed to have to tell you that essentially the allegation made by Mrs x against me is correct. There are broad aspects of the letter of complaint with which I could debate however, essentially she is correct in referring to the sexual relationship which we had in the time referred to."

1.7 DR N went on to explain to the HDC that he had been seeking medical and counselling

assistance for the matter and further that he had now voluntarily taken leave of absence from his practice from 12 June 1997 on health grounds. He informed the HDC that he was prepared to undertake not to return to medical practice until the matter had been determined.

1.8 THE application for interim suspension is opposed by Mr H Waalkens acting as counsel for Dr N. Written submissions have been received from Mr Waalkens.

1.9 HAVING spoken to Dr N, Mr Waalkens has advised the Tribunal that Dr N has kept to the undertaking not to practise given to the HDC. Moreover, through counsel, Mr Waalkens explained that Dr N would be able to give an undertaking to the Tribunal that he will not return to medical practice until the charge against him has been heard and determined by the Tribunal.

1.10 MR Waalkens also confirmed that Dr N had ceased to practise medicine. The reference to "a recent mountain biking event" is a complete mystery to Dr N, Mr Waalkens explained.

1.11 IN the event of the Tribunal being prepared to consider acceptance from Dr N of an undertaking not to practise medicine, he has supplied the Tribunal with the following signed undertaking:

"22 December 1997

Medical Practitioners Disciplinary Tribunal

Re Mrs x,

By this letter, I hereby give to the medical practitioners disciplinary tribunal, my undertaking not to return to medical practice untill [sic] the matter of Mrs x's complaint

has been dealt with by your tribunal. I do this following Mr H Waalkens (my counsel) discussion with your tribunal and pursuant to paragraph 19(c) of his memorandum dated 19 December 1997.

signed xx N"

2.0 ORDER:

UNTIL the charge of disgraceful conduct in a professional respect against Dr N has been heard and determined, that he not return to medical practice, in accordance with a written undertaking given to the Tribunal by Dr N on 22 December 1997, with leave to apply for any further or other orders. As a consequence the application for interim suspension under Section 104 of the Act is declined.

3.0 STATEMENT OF REASONS FOR ORDER:

3.1 FROM the outset Dr N has acknowledged the inappropriateness, and total unacceptability of his conduct towards the complainant. Fortunately she will not suffer the further trauma of being the principal witness in defended disciplinary proceedings. However that is not to say that the detail of all the allegations against Dr N will be conceded by him. Mr Waalkens has already indicated as much on his client's behalf.

3.2 DR N gave a prompt undertaking to the HDC, in writing, on 18 June 1997 (and on his counsel's advice) not to practise medicine pending an outcome to the complaint. Although the Director of Proceedings has indicated a belief on the part of the complainant that Dr N was seen at a recent sporting event with his medical bag, this belief remains largely unsubstantiated. Mr Waalkens is a respected legal practitioner in this jurisdiction. His advice that Dr N has not been in breach of

his undertaking to the HDC must command a significant measure of influence with the Tribunal.

3.3 A further and quite separate written undertaking has been given by Dr N direct to the Tribunal, along the lines of the earlier undertaking given to the HDC. Provided this undertaking is honoured completely and in all respects, there is merit in Mr Waalkens submission, that there exists no risk to the public or other grounds which would justify making an interim suspension of registration order pending the hearing and determination of the charge.

3.4 IN declining to make the order sought, Dr N should be under no misapprehension as to the seriousness and gravity with which the Tribunal views the charge against him. In being prepared to accept an undertaking not to practise (in lieu of an interim suspension order), Dr N is reminded that any breach of his undertaking will render him in contempt of the Tribunal. Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1000 who intentionally and without lawful excuse disobeys an Order or direction in the course of any proceedings before the Tribunal. Also it should be noted that any breach of the undertaking would almost certainly impact when considering penalties.

DATED this 24th day of December 1997.

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P J Cartwright

CHAIRPERSON