Medical Practitioners Disciplinary Tribunal

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DECISION NO.: 62/98/34C

IN THE MATTER of the MEDICAL PRACTITIONERS ACT 1995

AND

IN THE MATTER of disciplinary proceedings against **TANE ARATAKI TAYLOR** medical practitioner of Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Friday 18 December 1998

PRESENT: Mr P J Cartwright - Chair
Dr I D S Civil, Dr R S J Gellatly, Dr A D Stewart,
Mrs H White (members)

APPEARANCES: Ms K Davenport for Complaints Assessment Committee
Mr N Beadle for respondent
Ms G J Fraser - Secretary
(for first part of call only)

DECISION ON THE APPLICATION FOR PRIVACY

1. **APPLICATION** has been made for the following orders pursuant to Section 106 of the Medical Practitioners Act 1995 (the Act):

1.1 **AN** order prohibiting the publication of any report or account of any part of any hearing by the Tribunal, whether held in public or in private;

1.2 **AN** order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing before the Tribunal;

1.3 **SUBJECT** to the provisions of subsection 106(7), an order prohibiting the publication of the name, or any particulars of the affairs, of Dr Taylor.

2. **GROUNDS OF APPLICATION**

2.1 **IT** is desirable and in the public interest that the orders be made.

2.2 **THE** nature of the charge is that Dr Taylor in the course of his care and treatment of the complainant failed to exercise a standard of care and skill reasonably to be expected in the circumstances in regard to her labour and the birth of her child. High Court proceedings alleging breach of duty and seeking substantial damages were issued on 19 May 1998. Applications have been made to strike out the proceedings. Those applications have yet to be determined.

2.3 **ON** 14 September 1998 Master Faire, by consent, made an order that publication of the name and identifying particulars of the defendants be prohibited pending determination of the defendants' application to strike that proceeding out. On 6 November 1998 the name suppression order was continued pending review at a hearing scheduled for 23 February 1999.

2.4 **SUBSTANTIALLY** the same issues apply in relation to name suppression and the other related orders in the disciplinary proceedings pending the outcome of the hearing before the Tribunal.

2.5 **THE** CAC has made no recommendation to the Tribunal for suspension of registration or that conditions be imposed pursuant to Section 95 of the Act.

3. DECISION

3.1 **THE** application is declined. Reasons for that decision follow.

3.2 **THIS** is a formal application pursuant to Section 106(2) of the Act which 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, and to the public interest, it may make an order prohibiting publication of the name, or any of the particulars of the affairs of any person. Orders pursuant to Section 106(2)(b), (c) and (d) are sought.

3.3 **THE** interests of Dr Taylor have been explained in the papers filed by Mr Beadle with the Tribunal. He said the existence of the disciplinary proceedings may attract media interest. He believes the allegations, if made public, will be likely to have an immediate and serious

consequence for Dr Taylor's business and his reputation, both in the eyes of the public and within his profession. It is suggested that Dr Taylor's family may also suffer from media speculation. While the charge against Dr Taylor is serious, since 1996 he has not been involved in primary obstetric care.

3.4 **THE** events in issue occurred in May 1996 and are only now coming before the Tribunal. Given this delay Mr Beadle explained there seems little merit in Dr Taylor being the subject of potential publicity at a time when the charge has, as yet, not been particularised, although he accepts that the background to the charge is well known to Dr Taylor.

3.5 **MR** Beadle submitted that given these matters, on balance it is appropriate that name suppression is not only in Dr Taylor's interest but also in the public interest, pending the outcome of the inquiry by the Tribunal.

3.6 **WE** turn now to a consideration of the interest of the complainant, Ms A. Counsel acting on Ms A's behalf, Mr David Carden, indicated in a letter of 9 December 1998 to Mr Beadle that she does not, either on her own behalf, or on behalf of her daughter, consent to any order for hearing of the charge in private nor the other orders sought by Dr Taylor prohibiting publication of reports, books, names etc. In that letter Mr Carden made it abundantly clear that Ms A, for her part, is of the view that the charge should be heard in public and that, where publication is appropriate, this should follow. In advancing this position Mr Carden noted that his clients had not opposed a suppression order in relation to the High Court proceedings against parties including Dr Taylor. Mr Carden cautioned this had been with some reluctance and that there

could be no assurance that they would consent to a continuation of any suppression order nor indeed that they would not themselves apply to have that order lifted.

3.7 **SO** far as any potential impact from the hearing of the disciplinary charge in public and potential publication of details may have on the pending High Court proceedings, Mr Carden concluded his letter with these comments:

"My clients do not accept that that will be so and, if those do impact, then they are prepared to accept that. The hearing before the Medical Practitioners Disciplinary Tribunal is one of peer review and maintenance of professional standards. The public should be aware of the evidence on which the charges are laid and the outcome. The High Court proceedings in which our respective clients are involved is for damages for my clients arising from the activities of, inter alia, Dr Taylor, and the consequences those activities have had on their lives. Hearing in public of the disciplinary proceedings or publication of details should not have any impact on the private damages claim that is brought."

3.8 **MS** Davenport indicated that she had canvassed the opinion of the CAC independently of the complainant. She explained its view is that if Dr Taylor is still practising in the area of obstetrics, there should be no suppression of his name. However if Dr Taylor is now employed in an area completely unrelated to obstetrics, then Ms Davenport indicated that the CAC would have no objection to a name suppression order pending the hearing of the charge against Dr Taylor.

3.9 **CLEARLY** the application for suppression of name and other details requires a balancing of the interests of Dr Taylor, the complainant and her child, together with the interests of the CAC, against the public interest.

3.10 **THE** case made out by Mr Beadle on behalf of Dr Taylor is clearly aligned with a deemed presumption of innocence pending outcome of the charge.

3.11 **IT** is significant that the general principle of Section 106 of the Act is that hearings of the Tribunal shall be held in public. Publication therefore follows unless one or more of the discretionary orders available under Section 106(2)(a) - (d) of the Act are made.

3.12 **WHILE** technically the interests of a respondent medical practitioner in non-disclosure are a matter to which the Tribunal can have regard under Section 106, if that were to be a determining factor, then no proceedings could be held in public. There is unlikely ever to be an instance when the reputation of the respondent medical practitioner is not in issue. But if his or her situation was the primary factor, and given undue weight, then the clear parliamentary direction in Section 106(1) of the Act that hearings are to be held in public, and published, could be so easily negated as to make that provision worthless.

3.13 **THAT** publication of the name of Dr Taylor in this case may have some impact on his reputation, cannot be denied. Equally, it may cause some distress. However, such impact will be apparent in every case where a medical practitioner faces a charge under the Act. The issue arises only after a practitioner has been charged. Parliament would have been aware of this when drafting Section 106(1), so that cannot form the basis for an order made under Section 106(2) of the Act.

3.14 **IN** terms of publicity that may be afforded to this case, the Tribunal considers, on the limited information available, that it should not excite any particular interest such as may lend itself to

sensational reporting. Fair and accurate reporting of the proceedings of the Tribunal is allowed, but the respondent medical practitioner would have open to him various measures to seek redress in the event of any defamation or contempt occurring.

3.15 **DR** Taylor has legal remedies open to him if he is dissatisfied with any publication which may take place. This factor should not unduly influence the Tribunal. It is certainly not sufficient, in a case where there is no evidence of any particular interest in publishing details by the media, to form the basis of an order suppressing publication of details by the Tribunal.

3.16 **HAVING** considered the interest of Dr Taylor, the Tribunal notes that the interests of the complainant and of her daughter have already been recorded. Clearly those interests do not, in the Tribunal's view, in any way support or favour the making of the non-publication orders sought on behalf of Dr Taylor.

3.17 **THE** CAC's position as explained by Ms Davenport has also been noted. Given that Dr Taylor's current employment is an area completely unrelated to obstetrics, the CAC would have no objection to his name being the subject of a suppression order. However it is not possible to go so far as to say that the CAC supports the making of the suppression orders sought.

3.18 **FINALLY,** there is the public interest to be considered. Section 106 of the Act reflects a very significant change in the direction of the conduct of medical disciplinary cases. Under the Medical Practitioners Act 1968 charges were considered in private, even although the statute

itself was silent on the issue. Now, under the 1995 Act, there is a specific direction that such proceedings shall be held in public.

3.19 **UNDER** Section 106 of the Act, the Tribunal is expressly directed to consider the public interest. In discussing the role of the public interest in name suppression applications before disciplinary tribunals, Tompkins J in delivering the judgment of the Court in *S v Wellington District Law Society* AP 319/95, High Court, Wellington, 11 October 1996, emphasised the presumption in favour of openness and the purpose of disciplinary tribunal proceedings in protecting the public. His Honour was dealing with a statute with a presumption in favour of public hearings, like the Medical Practitioners Act 1995. The Court noted at page 6:

"We conclude from this approach that the public interest to be considered, when determining whether the Tribunal, or on appeal this court, should make an order prohibiting the publication of the report of the proceedings, requires consideration of the extent to which publication of the proceedings would provide some degree of protection to the public, the profession, or the court. It is the public interest in that sense that must be weighed against the interests of other persons, including the practitioner, when exercising the discretion whether or not to prohibit publication."

3.20 **IT** follows the Tribunal must endeavour to balance the competing interests of those persons whose interests have already been explained, and the public generally, this latter interest identified variously in previous cases 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.

3.21 **THE** Tribunal has consistently adopted this balancing approach in other Decisions relating to Section 106, most recently in the case of Dr W in Decision 45/98/24C. There is clear public

interest in matters of professional practice that fall squarely within the public interest (p 8, para 3.10).

3.22 **PARLIAMENT** obviously intended that hearings should be in public, for the reasons identified by the Tribunal in an earlier case concerning Dr Sami (Decision 14/97/3C), namely that the public should have confidence in the integrity of the disciplinary process. If the Tribunal were to find the charge not proved, then Dr Taylor will not face any penalty and effectively will be exonerated. In our view the public has a right to know this as much as it has a right to know the outcome of the proceedings in terms of the effect of any order under the compulsory reporting provisions in Section 138 of the Act.

3.23 **HAVING** endeavoured to weigh and balance carefully the competing interests of the persons and the public interest referred to in Section 106(2) of the Act, for the reasons given the Tribunal has not been persuaded that the orders sought should be made, and they are therefore declined.

3.24 **IN** delivering this Decision the Tribunal has had due regard to the judgments of Judge Joyce QC in similar matters: *B v Medical Practitioners Disciplinary Tribunal* (which is reported in the District Court reports under the name of *ZX v Medical Practitioners Disciplinary Tribunal*) and *P v Medical Practitioners Disciplinary Tribunal* AP 2490/97, 18/6/97. We have also considered the oral judgment of Judge Tuohy in *W v the Complaints Assessment Committee*, MA 122-98, 9/7/98. In our view these judgments emphasise the balancing process which the Tribunal, in the exercise of its discretion under Section 106 of the Act, has endeavoured to undertake in this instance.

DATED at Auckland this 27th day of January 1999.

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P J Cartwright

CHAIR