

Medical Practitioners Disciplinary Tribunal

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DECISION NO.: 77/99/44D

IN THE MATTER of the MEDICAL PRACTITIONERS

ACT 1995

AND

IN THE MATTER of disciplinary proceedings against A

medical practitioner of Auckland

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Thursday 27 May 1999

PRESENT: Mr P J Cartwright - Chair

Dr J W Gleisner, Associate Professor Dame N Restieaux,

Mr G Searancke, Dr A F N Sutherland (members)

APPEARANCES: Ms T Davis Director of Proceedings

Mr C W James for respondent

(for first part of call only)

DECISION ON APPLICATIONS FOR NAME SUPPRESSION:**1. BACKGROUND:**

1.1 **THE** Director of Proceedings of the Health & Disability Commissioner pursuant to Section 102 and 109 of the Medical Practitioners Act 1995 (the Act) has charged Dr A that on or about 23 August 1997 while treating his patient, Ms xx, he acted in such a way that amounted to disgraceful conduct in a professional respect in that he provided services of an inadequate and inappropriate professional standard. The charge against Dr A has been set down for hearing in Auckland on 14 June 1999. The first application is for interim suppression of Dr A's name pending the findings of the Tribunal.

1.2 **IN** addition there is a second application, from the Director of Proceedings on behalf of the complainant Ms xx, that her name be suppressed.

2. GROUNDS OF DR A'S APPLICATION:

2.1 **PUBLICATION** of his name prior to a finding by the Tribunal has the real potential of not only seriously damaging his reputation and practice in an unjust manner, but of causing damage to his family and adversely affecting his ability to give valuable service to the community causes that have some reliance upon him.

2.2 **THE** damage resulting from name publication would far outweigh the interests of the public, such interests which could be satisfied in any event on a finding of guilty should that be the Tribunal's determination.

2.3 **THE** allegations subject to these charges lend themselves to sensational reporting because of the underlying salacious elements.

2.4 **PUBLICATION** of Dr A's name prior to a finding will inevitably cause irreparable damage to him (and associated "*fall out*" to those associated with him) such that it is patently unjust that he should receive such punishment prior to the Tribunal reaching a finding on the evidence and when he may be found innocent of the charges.

2.5 **UNTIL** the Tribunal has heard all the evidence and made its finding, the medical practitioner is entitled to some protection if his personal circumstances so warrant it.

2.6 **TO** refuse interim name suppression would mean that the media could well report matters in an unbalanced manner and distortions could occur, especially as the doctor's "*side of the story*" may not be tendered until later in the day of hearing after media publication deadlines have been passed.

2.7 **THE** complainant consents to interim name suppression of Dr A on the basis that a fresh application is made once the Tribunal has made its determination.

3. GROUND OF COMPLAINANT'S APPLICATION:

3.1 **THE** charge relates to a matter of a sexual nature.

3.2 **DR A** consents to the complainant's application for privacy.

4. DR A'S APPLICATION : UNANIMOUS DECISION:

4.1 THE application is granted. Reasons for that Decision follow.

4.2 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. An interim order for suppression of Dr A's name pending the findings of the Tribunal, is sought pursuant to Section 106(2)(d) of the Act.

4.3 THE interests of Dr A have been explained in the grounds supplied in support of his application.

4.4 THE application for interim suppression of Dr A's name requires a balancing of his interests, together with those of the complainant, the Director of Proceedings and the public interest.

4.5 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 has been 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.

4.6 **THE** Tribunal has consistently adopted this balancing approach in other Decisions relating to Section 106. There is clear public interest in matters of professional practice that fall squarely within the public interest.

4.7 **PRINCIPALLY** for the following two reasons the Tribunal is prepared to grant interim suppression of Dr A's name.

4.8 **FIRST** there is the family background to be considered. There are xx children who are all still at home with Dr A and his wife, xx and xx, ages ranging from xx to xx years. Dr A's wife of 24 years has recently taken up xx studies. The family are committed xx and Dr A is a xx in the local xx. The Tribunal agrees that the interests of Dr A's xx children, and particularly their education, is a major factor to be taken in to account in granting him interim suppression of name. The family background factor assumes prominence in this case given that the charge relates to a matter of a sexual nature. But for this aspect of the charge it is unlikely that this factor would have assumed such prominence in the consideration of the application for interim suppression of Dr A's name.

4.9 **THE** second principal factor which has influenced the Tribunal in granting interim suppression of name is what we will describe as the cultural component. Dr A is xx born and educated. In a communication to Mr James the xx, himself also xx born and a former xx 1995 - 1996, explained that the extended-family principle is at the heart of xx communities anywhere in the world where there are xx. In New Zealand xx explained it is no different, in fact due to the disorientating nature of a foreign culture and context, this concept has become a life saver for many xx in many instances. Consequently, what happens to one member of the community,

not only impacts on the individual concerned, but affects the whole community in New Zealand. When this happens, the ramifications are felt right back in xx, even touching the most loved and best protected segment of xx society, the xx. Apparently this is the nature of the xx extended-family community. When one member rejoices, they all rejoice; when one weeps, they all weep. xx explained the effect of non-suppression of Dr A's name before determination of Tribunal findings, would be:

“Because of the intimate nature of the xx society as described above, it can be very cruel to those who would do anything to bring disrepute or ‘xx’ (stigma) to do the same. It is inherent in a society which claims to operate on ‘I am my brother’s keeper’ principle. If xx’s name is released before the Trial or Judgement, people will automatically label him, as though he is already pronounced guilty. This means that regardless of the judgement, whether guilty or not guilty, his name, his family, his clan, his xx, and everything else that he is part of, will be stigmatised for many generations. This may sound dramatic but this is the reality in the xx context. The damage and havoc it will wreak will be severe indeed.”

4.10 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 been persuaded that it is desirable to make an order that there be interim suppression of Dr A's name pending determination of findings by the Tribunal. Accordingly the Tribunal grants the application to the end and intent:

- (a) That publication of Dr A's name is prohibited pending the determination and findings of the Tribunal, or further order, or orders, of this Tribunal.
- (b) That this Decision not be published beyond the Tribunal, the parties or their counsel in a form which contains any reference to the name of Dr A.

5. COMPLAINANT'S APPLICATION : UNANIMOUS DECISION:

5.1 THE application for suppression of the complainant's name is granted.

5.2 **BRIEFLY** reasons for that Decision are that if the complainant's name is not suppressed, we see a potential for her to suffer distress as a result of something which occurred in her private life. The private life perspective of a complainant's application for name suppression is a significant factor which may, probably invariably, outweigh the merit of a similar application from a respondent medical practitioner.

5.3 **IN** the event of suppression of the complainant's name not being granted, we consider it is likely that persons in similar circumstances would be deterred from making a complaint. This in turn could undermine the function of the Tribunal.

5.4 **THERE** is good judicial precedent for the proposition that complainants in medical disciplinary proceedings are entitled to seek privacy: *Director of Proceedings and the Health & Disability Commissioner v The Nursing Council of New Zealand*, HC, Wellington 774/98, 7/12/98, Baragwanath J.

5.5 **FOR** the reasons given the complainant's application for name suppression is granted.

DATED at Auckland this 11th day of June 1999.

P J Cartwright

CHAIR