

Medical Practitioners Disciplinary Tribunal

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DECISION NO.: 89/99/48D

IN THE MATTER of the MEDICAL PRACTITIONERS
ACT 1995

AND

IN THE MATTER of disciplinary proceedings against **M**
medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Friday 10 September 1999

PRESENT: Mrs W N Brandon - Chair

Dr J M McKenzie, Dr A D Stewart, Dr B J Trenwith,

Mrs H White (members)

APPEARANCES: Mr M F McClelland for Director of Proceedings

Ms J Gibson for respondent

Ms G J Fraser - Secretary

(for first part of call only)

DECISION ON THE APPLICATION FOR NAME SUPPRESSION

1.1 THE applications seeking name suppression on behalf of both the complainant patient and the medical practitioner whose conduct is at issue in this matter, are granted.

2. THE APPLICATIONS

2.1 ON behalf of the complainant patient and her husband, an application for name suppression pending the hearing of evidence is sought on the grounds that publication of names of the patient, and/or her husband would upset them and cause them embarrassment.

2.2 ON behalf of the medical practitioner, applications seeking suppression of his name, and any identifying particulars, is sought pending the conclusion of the hearing of evidence on the following grounds:

1. Dr M has suffered from considerable stress as a result of this process.
2. Dr M will be compromised in his ability to present his best defence if name suppression and suppression of identifying details are not granted.
3. There is no justifiable element public interest in the notification of Dr M's name; he does not treat antenatal patients.
4. Dr M's wife is under significant stress, and publication of his name, which is a relatively unusual one, will have a damaging effect on her. She is a health professional by occupation.
5. That the circumstances of the death of Mrs A's baby could lend themselves to sensational reporting, unconnected with the allegations against Dr M.

6. Publication of Dr M's name prior to a finding by the Tribunal has the very real potential of seriously damaging his reputation with his loyal patient base, in an unjust manner given the limits of his practice.

This application is made in reliance on section 106(2)(d) of the Medical Practitioners Act 1995. Decision No. 77/99/44D of the Medical Practitioners Disciplinary Tribunal and *P v D* High Court of New Zealand. Auckland Registry. CP No. 689/98. 18 June 1999 Nicolson J.

2.3 **BOTH** applications were made pursuant to Section 106 (2) of the Medical Practitioners Act 1995. That section 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 any 1 or more of the following orders:

- (a) An order that the whole or any part of a hearing shall be held in private:*
- (b) 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:*
- (c) An order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:*
- (d) Subject to subsection (7) of this section, an order prohibiting the publication of the name, or any particulars of the affairs, of any person.”*

2.4 **HEARING** of the applications proceeded by way of telephone conference commencing at 8.00 am on Friday 10 September 1999. In advance of the hearing submissions in support of the applications were filed by Counsel acting on behalf of the Director of Proceedings and the medical practitioner respectively. All of the submissions were carefully considered by this Tribunal.

3. REASONS FOR DECISION

Potential for complainant patient to be caused distress and embarrassment

3.1 **AT** the hearing of the applications Counsel for the complainant patient confirmed the patient's concerns that the subject matter of this complaint might be susceptible to 'sensationalist'-type reporting which would cause the complainant and her husband great distress and embarrassment. Given the tragic and deeply personal nature of the events giving rise to the complaint, it cannot be said that such concerns are unreasonable or misplaced.

3.2 **THE** Tribunal accepts entirely that any reporting or comment which is not appropriately restrained or sensitive to the feelings of those persons directly involved, clearly has the potential to cause the patient and her family embarrassment and distress over and above that which they have already undoubtedly suffered.

No objection to granting of medical practitioner's application

3.3 **THE** patient and her husband do not object to the granting of the application made on behalf of the medical practitioner. In addition to the grounds cited in support of his application, any identification of the medical practitioner or any particulars which might lead to his identification, has the potential also to identify the patient and her family. Given the strength of the argument in favour of not identifying the patient, this is a factor which, in this case, weighs in favour of granting the practitioner's application.

3.4 **AS** the Tribunal has said on many previous occasions, every application must be considered on its own merit. In the particular circumstances of these applications, the concern that identification of the practitioner involved would lead inevitably to identification of the patient,

has substance. This is primarily because the complaint arises in the context of a set of circumstances which, for this patient and this doctor, were highly unusual, and the treatment given by the practitioner was outside of his usual area of practice.

No risk to public safety

- 3.5** AS a result of this latter fact, no issues of public safety arise as the practitioner does not normally treat patients in the area of practice involved, and he has undertaken never again to treat or to offer advice of the sort which is now the subject of complaint. This is not case therefore, where identification of the practitioner pending the outcome of the hearing of the charge is necessary in the public interest.

Delay in prosecuting complaint

- 3.6** A further significant factor weighing in favour of granting these applications is the length of time which it has taken to bring this complaint to the Tribunal. In his affidavit filed in support of his applications, the practitioner provides a chronology of this complaint:

- Consultation giving rise to complaint **5 March 1997**
 - Complaint made to Medical Council **27 May 1997**
 - Notified of complaint by Health & Disability Commissioner **18 July 1997**
 - Practitioner responded to Commissioner **18 August 1997**
 - Practitioner received Commissioner's Opinion **16 November 1998**
- (the practitioner heard nothing from the Commissioner during this interval)
- Responded and receipt of Commissioner's Final Opinion **14 December 1998**
 - Hearing before Director of Proceedings **10 March 1999**
 - Practitioner receives advice of Charge **20 July 1999**

- 3.7** IN his affidavit, the practitioner refers to the length of time it has taken to progress this complaint to a hearing as “excessive”. It is the Tribunal’s unanimous view that this assertion is not without some substance, especially since this complaint involves a single episode of care and circumstances which, while most serious, do not appear to be unduly complex or convoluted. The most significant period of delay appears to the Tribunal to be the period of 14 or so months during which the Commissioner had the complaint, and the practitioner’s response to it, under consideration.
- 3.8** SUCH a delay in moving a complaint to a resolution, regardless of what form that might take, must cause distress to all parties, not the least the complainant and her husband, who in this case must deal with profound grief and who must re-live, on several occasions, events which would cause anyone to suffer distress and anger on every occasion they must recount them.
- 3.9** FOR the practitioner, the delay and the long periods of time during which he heard nothing, undoubtedly have caused stress and distress to him and his family, and a loss of confidence inevitably affecting his professional life and practice.
- 3.10** IT is perhaps relevant to note that the Code of Patient’s Rights, administered by the Commissioner, provides strict time limits within which health and disability providers must acknowledge complaints, and investigate them, and those time limits are expressed in terms of days, rather than weeks or months.
- 3.11** ALSO, Section 6 of the Health and Disability Commissioner’s Act stipulates that the purpose of the Act is to “*promote and protect the rights of health consumers and disability*

services consumers, and, to that end, to promote the fair, simple, speedy, and efficient resolution of complaints relating to infringements of those rights.” Finally, under Right 10 of the Code of Health and Disability Services Consumers’ Rights, the Right to Complain, every health services provider “*must facilitate the fair, simple, speedy, and efficient resolution of complaints*”.

3.12 **FURTHER**, every provider “*must inform a consumer about progress on the consumer’s complaint at intervals of not more than one month.*” The prompt and efficient investigating and processing of complaints is therefore central both to the Commissioner’s statutory purpose and required of providers.

3.13 A delay of almost 2 ½ years between the time the complaint was first notified to him, and it was subsequently referred to this Tribunal for hearing whilst it may or may not be “excessive” in legal terms (see for example, CAC -v- Phipps, Decision No: 88/99/43C, and the cases referred to therein) nevertheless equally cannot be said to represent a “*fair, simple, speedy, and efficient resolution*” of this complaint.

3.14 **THE** Commissioner’s recommendation, in her current review of the Health & Disability Commissioner’s Act 1994 undertaken pursuant to sections 18 and 21 of the Act, that a second, independent, investigation of a complaint by the Director of Proceedings following an investigation by the Commissioner, is unnecessary and can result in needless delay, warrants consideration by the legislature. Especially when, as in the present circumstances, the Commissioner’s investigation took some 14 - 17 months to complete, and the Director of Proceedings’ investigation added a further 4 - 5 months to the time taken to bring the matter to the Tribunal.

Other considerations

3.15 COUNSEL for the practitioner advised the Tribunal that this complaint is also to be referred to the Complaints Review Tribunal. Taking into account the possibility of appeals from either or both Tribunals, the parties may yet have some way to go before this complaint is finally resolved.

3.16 IT is clearly in everybody's interest that this Tribunal hears the charge laid against the practitioner as soon as it is able, and that the hearing of the charge proceeds as fairly and sensitively as possible, taking into account the interests of all concerned.

3.17 FOR all of these reasons, the Tribunal is of the unanimous view that it is desirable that these applications should be granted. Accordingly, the Tribunal Orders:

1. That the names of the complainant patient and her husband are suppressed pending further order of this Tribunal;
2. That the name of the medical practitioner is suppressed pending further order of this Tribunal;
3. That there is to be no publication of any details which might lead to the identification of the complainant patient, her husband or the medical practitioner respondent, pending further order of this Tribunal.

DATED at Auckland this 24th day of September 1999.

W N Brandon

CHAIR