

Medical Practitioners Disciplinary Tribunal

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DECISION NO.: 100/99/49D

IN THE MATTER of the MEDICAL PRACTITIONERS

ACT 1995

AND

IN THE MATTER of disciplinary proceedings against **J**

medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

DECISION made on 18 November 1999 on the applications (and relevant documents) presented by
counsel for both parties

MEMBERS: Mr T F Fookes - Chair

Dr I D S Civil, Dr A M C McCoy, Dr J M McKenzie,

Mr G Searancke (members)

COUNSEL: Mr M F McClelland for Director of Proceedings

Mr C W James for respondent

DECISION ON THE APPLICATIONS FOR ORDERS PROHIBITING THE PUBLICATION OF NAMES AND ADDRESS OF THE COMPLAINANT AND HER HUSBAND AND THE NAME AND IDENTIFYING PARTICULARS OF THE RESPONDENT DOCTOR:

1. THE CHARGE:

1.1 **THE** Director of Proceedings has laid against the respondent a charge alleging that on or about 17 November 1996 whilst attending on his patient Mrs A he acted in a way that amounted to professional misconduct in that he manipulated the neck of his said patient without obtaining her informed consent. Five particulars are set out in the charge.

1.2 **THESE** reasons were prepared before the commencement of the hearing of the charge which was scheduled to take place on 22 and 23 November 1999.

2. THE APPLICATIONS:

2.1 **THE** Director of Proceedings has applied for an order suppressing the publication of the identity and address of the patient A and her husband A on the grounds that it is desirable to do so, after having regard to the interest of the privacy of the patient. The application is supported by an affidavit from the patient to which the Tribunal will shortly refer. The application is stated to be pursuant to Section 106(2)(a) of the Act but has been considered under Section 106(2)(d).

2.2 **DR J** has applied for an order prohibiting the publication of his name or any details leading to his identification. The application is not supported by affidavit but contains detailed grounds.

2.3 **BOTH** of these applications were made after the date (24 August 1999) specified, in the checklist sent to the parties, as the date by which any application for privacy or name suppression must be forwarded to the Tribunal. It may be that in the case of either or both of the applications there were good reasons for the delay (and the remarks which follow should thus be clearly understood not to be made in any critical manner), but for guidance in other cases it is worth making the points that:

- (a) There is a right of appeal against an order made by the Tribunal under Section 106 of the Act or a refusal to make such an order.
- (b) If applications under that section are left until shortly before a hearing and a person wishes to appeal against the Tribunal's decision thereon it may become necessary for the hearing to be adjourned (at a very late stage) until the appeal has been dealt with (which could cause considerable inconvenience to witnesses, parties, counsel, members and staff of the Tribunal and other interested persons). Such a development could also result in expense which is undesirable given that the costs of the Tribunal are all paid by the Council which may impose a disciplinary levy on all medical practitioners for the purpose of funding those costs.
- (c) For various administrative reasons it is important for the Tribunal and its staff to know well in advance of the scheduled date of hearing whether a case is one which does or does not involve applications for privacy or suppression, to determine in a timely way any which are made and to be able safely to conclude that if the relevant date passes

without an application having been made none will thereafter follow. In particular the Tribunal needs to know with certainty, once the relevant date has passed, that there is nothing to prevent it making disclosure of a practitioner's name in any notice it sends out or in response to inquiries.

In this case the Tribunal has dealt with the applications despite their having been filed after the date specified in the checklist but in future cases it will expect all timetable dates to be strictly observed and may, in the absence of some acceptable explanation for lateness, decline to consider any applications for privacy or suppression which are lodged after the date stipulated in the checklist (such course being available to the Tribunal by virtue of its discretionary power, under Clause 5 of the First Schedule to the Act, to regulate its procedure in such manner as it thinks fit).

2.4 IN this case neither the Director of Proceedings nor the respondent doctor wished to be heard in support of or in opposition to the opposing party's application. The respondent consented to the order sought in respect of the patient and her husband. The Director of Proceedings had no objection to the respondent's application being granted on an interim basis. In the circumstances, and in view of the urgency, the applications have been considered by the Tribunal on the basis of the papers filed.

3. THE LAW:

3.1 SECTION 106(1) of the Act provides as follows:

“Hearings of Tribunal to be in public

(1) *Except as provided in this section and in section 107 of this Act, every hearing of the Tribunal shall be held in public*

Section 106(2) is as follows:

- (2) *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.”*

4. THE DIRECTOR’S APPLICATION:

- 4.1** **THE** affidavit sworn by the patient, who is married, deposes that she has had a prior marriage and that her former husband is extremely violent and has “hounded” her in the past. She does not want anyone to know where she is living. She fears that if any information about her or her whereabouts became known to certain people it could be passed to her former husband.
- 4.2** **AS** recorded above Dr J consents to the application for the name and address of the patient and her present husband to be suppressed.
- 4.3** **HAVING** considered the matter and had regard to the interests of the patient and her present husband, the privacy of the complainant patient and the public interest the Tribunal has no doubt that the name and address of the patient and of her husband (because publication of his name and address could lead to the address of the complainant becoming known) should be suppressed. An appropriate order will therefore be made.

5. THE PRACTITIONER'S APPLICATION:

5.1 WHEN considering applications for suppression of a medical practitioner's name the Tribunal is required to exercise its discretion by balancing the practitioner's interests with those of the complainant, the Director and the public interest.

5.2 WHILE the interests of a respondent medical practitioner in non-disclosure are a matter which the Tribunal can properly take into account under Section 106 they cannot be the determining factor because there is unlikely to be any case where that practitioner's reputation or other personal or commercial interests are not at risk simply by virtue of the fact that he is facing disciplinary charges.

5.3 BOTH the public interest and Section 106(1) require that hearings of the Tribunal generally be held in public (as this hearing is to be). The disciplinary process in relation to medical practitioners should also be as open and transparent as possible as part of the protection of the public interest. An application for suppression of a practitioner's name requires careful scrutiny for those and other reasons. As noted in 5.2 above, the mere fact that the practitioner's interests may be harmed by publication of name will not generally be the determining factor.

5.4 THE Tribunal has considered the grounds advanced in support of the practitioner's application. In relation to the personal circumstances of the practitioner there is material before the Tribunal which is sufficient to persuade it that in this particular case it should grant suppression of his name - and any identifying particulars - until such time as it has heard all the

evidence in the case and arrived at its decision. The Tribunal proposes to exercise its discretion accordingly.

5.5 **IN** arriving at this view the Tribunal has had regard among other things to the Director of Proceedings having no objection to the order being made on an interim basis and to the fact that the proximity of the hearing means that in a very short time the Tribunal will again consider the question of suppression of the practitioner's name. This is because the order in relation to publication of the respondent's name and identifying particulars is an interim order only. When the Tribunal has heard all the evidence in the case and arrived at its decision it will decide whether suppression of his name should be lifted, varied or made permanent.

6. ORDERS:

6.1 **HAVING** weighed up the information put before it and carried out the balancing exercise which is involved, the Tribunal is satisfied that it is desirable to grant both applications but on the basis that whereas the suppression of the names of the complainant and her husband is permanent that of the respondent is at this stage on an interim basis only.

6.2 **THE** Tribunal hereby orders that:

- (1) The publication of the names or present or former address of A and her husband A is prohibited.
- (2) The publication of the name or any details which might lead to the identification of the respondent medical practitioner is prohibited until the further order or orders of the Tribunal.

- (3) These orders are not to be published beyond the Tribunal, the parties or their counsel in a form which contains any reference to the name of the complainant, the complainant's husband or the respondent.

DATED this 29th day of November 1999.

T F Fookes

SENIOR DEPUTY CHAIR