

DECISION ON THE APPLICATION FOR NAME SUPPRESSION:**1. REASONS FOR DECISION OF THE TRIBUNAL MADE ON 6 OCTOBER 1999**

1.1 THIS Decision giving reasons for the Tribunal's Decision made on 6 October 1999 and advised to the parties by telephone on 8 October 1999 is to be read in conjunction thereof.

2. THE APPLICATION

2.1 TAKE Notice that Dr Y will move the Tribunal for an order that his name be suppressed:

UPON the following grounds:

- (a) That Dr Y and his family would suffer public derision, odium and contempt if no order was made pursuant to Section 106(1)(d) prohibiting the publication of the name, or any particulars of the affairs, of Dr Y and his family.
- (b) That the private interests of Dr Y and his family outweigh the public interest of publication.
- (c) That publication before a determination by the Medical Practitioners Disciplinary Tribunal would cause Dr Y and his family irreparable harm to their standing in their community.
- (d) As appears in the affidavit of Dr Y.

2.2 THE hearing of the application by the Tribunal was by way of telephone conference commencing at 7.00 pm on Wednesday 6 October 1999. In advance of the hearing submissions in support of the application were filed by Mr S Perese, Counsel for the applicant, together with an affidavit provided by the applicant. Annexed to the affidavit was a report from a specialist psychiatrist, Dr xx, to whom the applicant's wife had been referred.

2.3 **THE** Tribunal also had before it a Memorandum prepared by Ms K McDonald QC, Counsel for the CAC. In that Memorandum, Counsel advised that, if the application was to be considered on an interim basis only, the CAC would not object to the Order sought being made and would simply abide the Tribunal's decision.

2.4 **THE** Tribunal did proceed on that basis taking the approach generally adopted in relation to such applications that it is unwilling to consider making any permanent orders of this sort until all of the evidence relating to the Charge is known to it. Because an application for name suppression by its nature must be made immediately after a Charge is notified to a practitioner if it is to be effective, the application proceeds on the basis of the barest information necessary to enable the Tribunal to consider it.

2.5 **AT** times, the small amount of information available creates some difficulty for the Tribunal and for that reason, the Tribunal requires Counsel to attend the telephone conference call so that they can assist the Tribunal if necessary. In this present case, the application and supporting documentation was quite comprehensive, and was very helpful in identifying the issues and providing relevant information. The Tribunal records its thanks to Mr Perese and Ms McDonald for that.

3. DECISION ON THE APPLICATION FOR NAME SUPPRESSION

3.1 **IN** 1998 in the xx District Court, the applicant was convicted of certain offences pursuant to Section 246 of the Crimes Act. The applicant was granted name suppression but that order was discharged upon conviction. The applicant pleaded guilty to the offences, and made reparation in the sum of \$5,000.00.

3.2 NOTWITHSTANDING the discharge of the name suppression order by the District Court, the applicant seeks that his name be suppressed by this Tribunal, at least until the hearing of the Charge is concluded, for the following reasons:

3.2.1 THE publication of his name potentially will seriously affect his family;

and

3.2.2 HE is advised that he has a good chance of defending the allegation that he is unfit to practice.

3.3 ON the face of it, such grounds appear to indicate nothing truly exceptional about this case, as was submitted by Ms McDonald. However the Tribunal is persuaded that, in the particular circumstances of this case made known to it, the application should be granted.

3.4 THE application is made under Section 106 of the Medical Practitioners Act 1995. That Section provides:

“106. 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.

(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.”

3.5 ACCORDINGLY, the Act requires that, when it is considering applications for interim suppression of a respondent medical practitioner’s name the Tribunal is required to exercise

its discretion by balancing the practitioner's interests, together with those of the complainant, the CAC and the public interest.

3.6 **THE** Tribunal has consistently taken the approach that while the interests of a respondent medical practitioner in non-disclosure are a matter to which the Tribunal can properly take into account under Section 106, if that were to be the determining factor then no proceedings could be held in public as there is unlikely ever to be an instance where the applicant's interests in terms of his or her reputation, family or commercial interests, will not be in issue simply by virtue of the fact that he is facing disciplinary charges.

3.7 **THE** issue of public safety is one factor which always weighs heavily in the Tribunal's deliberations. In this present case, the practitioner's clinical practice is not in issue. The convictions which have resulted in the Charge which is the subject of professional disciplinary proceedings relate to offences involving dishonesty. It is not a case where the public has an interest in terms of public safety, or because it is desirable that patients and potential patients should be put on notice that a complaint has been made. The public interest is therefore rather more confined than is normally the case.

3.8 **IN** any event, no application to hold the hearing in private has been made and therefore, pursuant to Section 106, the hearing will proceed in public. As Ms McDonald has commented in the submissions made on behalf of the CAC, a number of High Court decisions have emphasised the presumption in favour of openness and the purpose of Disciplinary Tribunal proceedings in protecting the public interest, and "*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”: *S v Wellington District Law Society* (AP 319/95, High Court, Wellington 11/10/96, per Tompkins J).

- 3.9** **THE** Tribunal considers that, in this case, the suppression of the applicant’s name only, especially on an interim basis, is unlikely to unreasonably restrict any legitimate public interest in the subject matter of this complaint.
- 3.10** **THE** applicant has deposed to the particular vulnerability of his family, especially of his wife, at this time. This evidence is supported by the report by Dr xx. Both the applicant and his wife have recently suffered the loss of their respective fathers. The applicant’s wife has not been able to come to terms with the loss of her father, and this is compounded by the fact that the family are recent immigrants to New Zealand and, prior to leaving their country of origin, the wife was, in part, her father’s caregiver.
- 3.11** **SINCE** coming to New Zealand the applicant and his wife have suffered significant financial losses, caused mainly by failures and negligence on the part of the company building their new home, resulting in protracted and expensive litigation. Despite obtaining a judgment against this company, it went into liquidation defeating recovery by the applicant. This has understandably caused the applicant and his wife considerable stress and hardship.
- 3.12** **THE** applicant deposes to his family’s desire to remain in New Zealand, and to his belief that he has a lot to offer the xx community. He is multi-lingual and considers himself to be a competent doctor. He is still developing his practice and his practice is growing. He

considers that the community, which is very close-knit, would be much slower to understand or forgive a complaint involving his clinical practice than the ‘white collar’ crime for which he was convicted.

3.13 HE accepts that his name is already a matter of public record, but deposes to the greater stigma which would attach to his reputation if the community became aware that he is in danger of being struck off the medical Register. If his name were to be published in the present context, the applicant believes that he would be unable to continue in practice, and thus unable to provide for his family. It would be necessary for him and his family to leave New Zealand.

3.14 THE potential effects therefore appear, at least at this initial stage, to be potentially disproportionate to the level of offending which was the subject of the convictions. The Tribunal also considers that it is reasonable for it to take into account the promptness with which the applicant admitted the offences when he was charged, and his willingness to assist with full disclosure of his offending, and to make reparation.

3.15 IN making this finding, the Tribunal does not intend in any way to suggest that it does not view the offending lightly simply because it might have occurred at the lower end of the scale of such offences. It intends only to comment that until it has heard all of the evidence, it forms no view as to what, if anything, the applicant’s convictions might indicate about his fitness to practise medicine.

3.16 HAVING weighed all of these factors, the Tribunal is satisfied that it is desirable to grant this application. Accordingly, it makes **ORDERS** as follows:

- (1) **THAT** the publication of the name, or any particulars of the affairs or any information likely to lead to the identification of the respondent is prohibited pending further order of the Tribunal.

DATED at Auckland this 26th day of October 1999.

W N Brandon

CHAIR