



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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**PUBLICATION OF
THE NAME OR
ANY DETAILS WHICH
MAY IDENTIFY THE
DOCTOR AS A
XX PRACTITIONER
IS PROHIBITED**

DECISION NO.:

235/02/97C

IN THE MATTER

of the MEDICAL

PRACTITIONERS ACT 1995

AND

IN THE MATTER

of disciplinary proceedings against D
medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Thursday 17 July 2003

PRESENT:

Dr D B Collins QC - Chair

Mrs J Courtney, Dr R S J Gellatly, Dr U Manukulasuriya,

Dr J L Virtue (members)

APPEARANCES:

Ms G J Fraser - Secretary

(for first part of call only)

COUNSEL: Ms K P McDonald QC for Complaints Assessment Committee
Mr H Waalkens for respondent

Previous Decisions

1. On 7 March 2003 the Tribunal granted Dr D interim name suppression, pending determination of the charge he faced. The Tribunal heard the charge on 14 and 15 April 2003 and delivered the reasons for its decision on 14 May 2003. In its substantive decision the Tribunal found Dr D's acts and omissions constituted professional misconduct in relation to two particulars of the charge.
2. At the time the Tribunal delivered its substantive decision it reserved the issue of whether or not it should continue to grant Dr D name suppression. That issue was reserved pending receipt of further information about Dr D's medical status. Delays occurred in obtaining the information sought, primarily because one of Dr D's medical advisers was overseas at the time. The Tribunal reconvened on 17 July (by way of telephone conference) to determine whether or not Dr D's name should be permanently suppressed.
3. The Tribunal does not propose to reiterate the contents of its decision granting interim name suppression. That decision should be read in conjunction with this decision. Suffice to say Dr D was granted interim name suppression because a majority of the Tribunal believed Dr D's "severe depression" and "related insomnia" were sufficiently exceptional factors to justify the granting of interim name suppression. The majority of the Tribunal were concerned Dr D might suffer further depression and stress related illness if his application for interim name suppression were declined. They were also concerned Dr D's medical condition could, if exacerbated by publicity, undermine his ability to defend the charge he faced.

4. It should also be mentioned that when Dr D made his initial application for name suppression he made no reference to his suffering any medical condition. Notwithstanding his failure to initially refer to the possibility he may be suffering medical difficulties, the Tribunal was concerned there might be a medical justification for granting interim name suppression and accordingly sought information on that issue from Dr D's counsel before deciding whether or not to grant interim name suppression. The information received from Dr D's general practitioner was very brief and said Dr D:

"...health has been good. He was diagnosed as having myasthenia gravis in February 1995 and has had to take medication for this intermittently. It has not affected his general well being over this time.

In the past two years as a result of a Court case hanging over his head, he has had bouts of severe depression with associated insomnia.

As he is now retired I would recommend, for health reasons, that he have name suppression in the upcoming Court case."

Despite its brevity, that was the evidence relied upon by the majority of the Tribunal when it granted Dr D interim name suppression.

5. At the hearing of the charge Dr D was questioned about his treatment and medication. He advised the Tribunal he was not receiving any medication or treatment for depression. The Tribunal was concerned that Dr D's evidence on this issue was not readily reconcilable with the reasons relied upon by the majority of the Tribunal when interim name suppression was granted. The Tribunal expected that if Dr D suffered "severe depression and insomnia" he would have been receiving treatment for those conditions.
6. The Tribunal provided Dr D with a further opportunity to explain the exact nature of his medical condition.

The New Evidence

7. The reports now received from a second general practitioner and a consultant psychiatrist provide the Tribunal with detailed information. The new reports confirm the following:
 - 7.1 Dr D is suffering from moderately severe agitated depression and meets the DSM IV criteria for a major depressive illness;
 - 7.2 Dr D's current depression is largely the result of the stress of the disciplinary hearing in April, and the delays involved in the hearing of the charge against him;
 - 7.3 Dr D needs to be on anti-depressant medication. This has now commenced;
 - 7.4 If name suppression is not continued Dr D's "... *depression is likely to significantly worsen and would likely prove resistant to treatment. Under such circumstances the risk of suicide would become considerable.*"(To quote from the psychiatrist's report).
8. The CAC has declined the opportunity to challenge or comment on this evidence.

Findings and Analysis

9. The evidence before the Tribunal is now of sufficient quality for the Tribunal to be satisfied Dr D is suffering a significant mental illness, and that his condition is likely to deteriorate if name suppression is not continued. The Tribunal is also satisfied that there is a realistic risk of suicide if Dr D name is now published in association with the Tribunal's findings.
10. The Tribunal must balance Dr D's personal circumstances against the wider public interests in relation to:
 - 10.1 Knowing the identity of practitioners found liable by the Tribunal;
 - 10.2 Maintaining the transparency and integrity of the disciplinary process by ensuring the public and profession knows the identify of doctors whose conduct is found

to have fallen below the standards expected of members of the profession in New Zealand;

- 10.3 The importance of freedom of speech and s.14 of the New Zealand Bill of Rights Act 1990;
 - 10.4 The need to ensure other doctors are not unfairly suspected of being the doctor who has been found liable by the Tribunal;
 - 10.5 The possibility of the disclosure of other complaints if Dr D's name is published.
11. The Tribunal places considerable weight on the first three public interest considerations identified in the preceding paragraph. As stated in paragraphs 37 to 41 of its decision granting interim name suppression the Tribunal believes Parliament intended the public would have a right to know the identity of most doctors found liable by the Tribunal.
 12. In this particular case, Dr D has been found guilty of professional misconduct in relation to two particulars of the charge he faced. The Tribunal did not find Dr D guilty of the serious charge of disgraceful conduct in a professional respect because it was satisfied his acts and omissions were motivated by a misconceived view of his role as doctor to the complainant. The Tribunal was satisfied Dr D was not sexually motivated when he made inappropriate sexual remarks to the complainant, and presented her with his perinometer.
 13. Had the Tribunal found Dr D guilty of disgraceful conduct then the public interest factors identified in paragraphs 10.1 to 10.3 of this decision (and explained in more detail in paragraphs 37 to 41 of its interim name suppression decision) may have outweighed Dr D's personal circumstances.
 14. The Tribunal places some weight on the fact that Dr D has not practised medicine since xx and is unlikely to ever practice again. The Tribunal is also persuaded by the fact that the CAC has not suggested other complainants or evidence might come to light if Dr D's name is published. The CAC's position is understandable in light of the fact the events complained of occurred in early 1995 and no other complaint of any kind has been made against Dr D.

15. The Tribunal is of course concerned other doctors should not be unfairly suspected of being involved in this case. To date the Tribunal has endeavoured to address that concern by directing nothing be published which identifies Dr D as having practised in xx. The Tribunal believes it appropriate to continue to protect the reputations of other practitioners by ensuring no one else is suspected of being the doctor found liable by the Tribunal in this case. That can only be achieved by continuing the suppression or identity of the region where Dr D practised.

Conclusion

16. The Tribunal is satisfied Dr D's personal medical circumstances outweigh the broader public interest in disclosing the identity of doctors found liable by the Tribunal.
17. The Tribunal orders that nothing be published which identifies Dr D, or the fact that he practised in xx. The Tribunal also directs the Secretary of the Tribunal publish in the New Zealand Medical Journal a summary of the Tribunal's decision. This order is made pursuant to s.138(2) Medical Practitioners Act 1995.

DATED at Wellington this 25th day of July 2003

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D B Collins QC

Chair

Medical Practitioners Disciplinary Tribunal