MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 251/03/101D

IN THE MATTER of the MEDICAL PRACTITIONERS ACT 1995

AND

IN THE MATTER of disciplinary proceedings against **ANTON FRANCOIS HAUPTFLEISCH** medical practitioner of Levin

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Tuesday 22 July 2003

PRESENT: Ms P J Kapua - Chair
Dr F E Bennett, Mrs J Courtney, Dr F McGrath,
Dr A A Ruakere (members)

APPEARANCES: Ms G J Fraser - Secretary
(for first part of call only)

COUNSEL: Ms T Baker for Director of Proceedings

Mr H Waalkens for respondent

DECISION ON APPLICATION FOR NAME SUPPRESSION

The Application

1. Ms Phipps, counsel for Dr Hauptfleisch, has made application under section 106(2)(d) of the Medical Practitioners Act 1995 for an order suppressing the name of Dr Anton Francois Hauptfleisch and any information that might lead to his identification.

2. During the telephone conference Mr Waalkens appeared for Dr Hauptfleisch in Ms Phipps' absence, and confirmed that the application was for interim name suppression.

3. The Notice of Application identifies three grounds which are raised as the basis of the application. Those grounds are:

> *"1. The adverse impact on the medical practitioner.*
>
> *2. No public interest is served by the publication of the medical practitioner's name.*
>
> *3. The breach of privacy that has already occurred with the exchange of personal information by the Medical Council of New Zealand to the Health and Disability Commissioner should not be compounded by allowing publication prior to the hearing."*

4. In support of the application is an affidavit sworn by Dr A Aston, a psychiatrist of Palmerston North. Dr Aston essentially asserts that at the time of the events giving rise to the charge against Dr Hauptfleisch he was recovering from depression and having alcohol related problems. He states however that Dr Hauptfleisch has made a significant recovery after quite a sustained struggle to overcome his difficulties. He states in respect of possible publicity:

"Whilst I'm sure his recovery is fairly robust, as a psychiatrist I would bear in mind the potential impact and rekindling of his problems as a consequence of non-suppression of his name."

5. In his oral submissions, Mr Waalkens explained that he relied on the following grounds:

   (a) The requirement for a hearing in public did not extend to publication of the name of the doctor or any party;

   (b) Given the psychiatric history of depression publication could spark the condition again and Mr Waalkens relied on a link between stress and depression;

   (c) An element of "inhumanity" if the doctor's name were published particularly in relation to the role of the media; and

   (d) The inequity between name suppression in relation to doctors before the Courts and this Tribunal and other professionals before disciplinary bodies.

6. Ms Baker on behalf of the Director of Proceedings opposes the application for interim name suppression essentially on the basis that there are no special or exceptional circumstances that warrant displacement of the presumption of openness.

The Decision

7. The Tribunal has considered the evidence in support of the application and considers it falls well short of establishing a link between publication and recurrence of a medical condition. The Tribunal therefore declines to make the order sought.

Reasons for the Decision

8. The starting point for any application for name suppression is the presumption in Section 106(1) of the Act that every hearing of the Tribunal shall be held in public except in certain circumstances. The Tribunal accepts that the public hearing aspect includes matters relating to publication of the names of the parties.

9. This is reinforced by Section 106(2) which states:

> *"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)) into the public interest, it may make one or more of the following orders:…"*

including an order prohibiting the publication of the name, or any particulars of the affairs, of any person.

10. In Decision 230/03/100D the Tribunal has identified specific public interest factors as follows:

- The public's interest in knowing the name of the doctor accused of the disciplinary offence;
- Accountability and transparency of the disciplinary processes;
- The importance of freedom of speech and the rights enshrined in Section 14 of the New Zealand Bill of Rights Act 1990;
- The extent to which other doctors may be unfairly implicated if the practitioner is not named;
- The possibility that publicity might lead to discovery of additional evidence;
- The extent to which the absence of publicity may allow an opportunity for further offending.

11. There is nothing in the submissions or evidence in support to indicate any circumstances that would militate against the public interest factors relating to the

public's right to know the name of the doctor accused of a disciplinary offence, accountability and transparency of the process and the importance of freedom of speech and the rights enshrined in Section 14 of the New Zealand Bill of Rights Act 1990. The Tribunal were also concerned that suppressing the doctor's name might unfairly reflect on other doctors practising in Levin.

12. In essence the Tribunal did not consider that there was any evidence of a link between the prior condition of Dr Hauptfleisch and publication of his name. Certainly there was nothing to outweigh the public interest which would be met by publication of his name.

13. The Tribunal therefore declines to make an order prohibiting the publication of Dr Hauptfleisch's name.

DATED at Auckland this 15th day of October 2003

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Prue Kapua
Deputy Chairperson
Medical Practitioners Disciplinary Tribunal