MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 238/03/101D

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 Monday 14 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
Ms G Phipps for respondent

DECISION ON APPLICATION FOR NAME SUPPRESSION

The Application

1. The Director of Proceedings has made application under section 106(2)(d) of the Medical Practitioners Act 1995 for an order suppressing the name of the patient and the complainant and any information that might lead to their identification.

2. The notice of application identifies four grounds which are raised as the basis of the application. Those grounds are:

> *"1. The patient would be caused stress by the publication of her name.*
>
> *2. Such stress is undesirable because of her medical condition.*
>
> *3. The complainant is the patient's husband, and therefore identification of the complainant would lead to the identification of the patient.*
>
> *4. No public interest is served by the publication of the patient's name or that of the complainant."*

3. In support of the application there is an affidavit sworn by the complainant which essentially asserts that publication of the patient's name or any information identifying her will add to her stress and may increase the chances of further haemorrhage. The complainant also asserts that the patient has already undergone significant stress relating to a family death and illness in recent months. In further support of the application there is a medical report from a consultant neurosurgeon at Wellington Hospital. In that report the neurosurgeon refers to the stress the patient is under in respect of her condition but states *"[s]tress in her life alone does not precipitate a bleed but the patients are often anxious and stressed because they are aware of a lesion in the brain that can change the pattern of presentation at any time in their life."*

4. As no submissions were received from counsel for Dr Hauptfleisch in respect of this application the Tribunal determined that it was not necessary to have either counsel in attendance.

The Decision

5. While the Tribunal considered that the evidence in support of the application lacked detail relating to the probability or severity of any effect on the patient's medical condition of publication of the name of the patient or any identifying information, the Tribunal has decided to grant an order prohibiting the publication of the name and occupation of the patient. Further the Tribunal has decided to grant an order prohibiting the publication of the name and occupation of the complainant as such publication will identify the patient.

Reasons for the Decision

6. The starting point for any application for name suppression is the presumption in section 106(1) that every hearing of the Tribunal shall be held in public except in certain circumstances. In *Harman v Medical Practitioners Disciplinary Tribunal* (4275/00, Auckland, 3 May 2002, Doogue DCJ) the Court stated:

> *"That presumption is reinforced by the statutory injunction to the Tribunal that it should hear proceedings in public."*

7. However section 106(2) 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)) and to the public interest, it may make any 1 or more of the following orders:…"*

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

8. It is clear from sections 106 and 107 of the Act that there are particular provisions concerning publication in relation to the complainant. Section 107 in particular refers to protections for complainants but it is clear from the wording of the section that it applies to the patient. In the current case the complainant is the husband of the patient and clearly identification of the complainant would lead to identification of the patient. For these purposes

the protections specifically referred to in the Act are for the protection of the patient.

9. In *M & Another v CAC* (106/99, Wellington 22 April 99, Ongley DCJ) the Court was required to consider appeals by both the complainant and respondent against the decision of the Tribunal not to grant name suppression and in that instance the Court held that the situation was different for each. The Tribunal had made the following statement which the District Court approved:

> *"Under s.106 of the Act, the Tribunal is expressly directed to consider the public interest. In discussing the role of the public interest in name suppression applications before disciplinary tribunals, Tompkins J in delivering the judgment of the Court in S v Wellington District Law Society AP319/95, High Court, Wellington, 11 October 1996, emphasised the presumption in favour of openness and the purpose of disciplinary tribunal proceedings in protecting the public. His Honour was dealing with a statute with a presumption in favour of public hearings, like the Medical Practitioners Act 1995. The Court noted at page 6:*
>
> > *"We conclude from this approach that the public interest to be considered, when determining whether the Tribunal, or on appeal this court, should make an order prohibiting the publication of the report of the proceedings, requires consideration of the extent to which publication of the proceedings would provide some degree of protection to the public, the profession, or the court. 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."*
>
> *It follows the Tribunal must endeavour to balance the competing interests of those persons whose interests have already been explained, and the public generally, this latter interest identified variously in previous cases as residing in the principle of open justice, the public's expectation of the accountability and transparency of the disciplinary process, the importance of freedom of speech and the media's right to report Court proceedings fairly of interest to the public".*

10. In *M & Another* the Court held that the starting point was that aspects of the complainant's medical treatment were private and confidential, and the subject of privilege against disclosure at law. Any public factor needed to be weighed against the complainant's right to privacy.

11. In that case the complainant's appeal was allowed and an order was made suppressing publication of the name of the complainant. The appeal by the practitioner against interim publication of his name was dismissed.

12. In this instance the privacy considerations of the patient are a relevant consideration and accordingly name suppression for the complainant is also granted on the basis that identification of the complainant will, of necessity, lead to identification of the patient.

13. However the Tribunal did not consider that the stress of the hearing alone was a sufficient ground to depart from the presumption in section 106, but in this instance that stress, in addition to the recent family matters, outweighed the public interest aspects derived from a hearing held in public.

Orders

14. The Tribunal therefore makes the following orders:

    (a) The application for a permanent order prohibiting publication of the name and identifying details of the patient involved in this charge is granted;

    (b) The application for a permanent order prohibiting publication of the name and identifying details of the complainant in this charge is granted.

DATED at Auckland this 25th day of July 2003

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Prue Kapua
Deputy Chairperson
Medical Practitioners Disciplinary Tribunal