



## **MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL**

PO Box 24463, Manners Street, Wellington • New Zealand  
13th Floor, Mid City Tower • 139-143 Willis Street, Wellington  
Telephone (04) 802 4830 • Fax (04) 802 4831  
E-mail [mpdt@mpdt.org.nz](mailto:mpdt@mpdt.org.nz)  
Website [www.mpdt.org.nz](http://www.mpdt.org.nz)

**DECISION NO:** 241/03/102D

**IN THE MATTER** of the MEDICAL  
PRACTITIONERS ACT 1995

**AND**

**IN THE MATTER** of disciplinary proceedings against  
**ANDREW BRUCE**  
**SIMMONDS** medical practitioner  
of Lower Hutt

### **BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL**

**HEARING** by telephone conference on Thursday 31 July 2003

**PRESENT:** Miss S M Moran (Chair)  
Dr J C Cullen, Associate Professor W Gillett, Dr G S Douglas,  
Mrs H White (Members)

**APPEARANCES:** Ms M McDowell, Director of Proceedings  
Ms G Phipps for Dr A B Simmonds  
Mr A Sherriff, for A, Ms B, Ms C  
and Ms D  
Ms I Egerton, for Dr E  
Ms G J Fraser (Secretary)  
(for first part of call only)

## **Decision On Application For Name Suppression**

### **The Application**

1. A which owns and operates a xx in xx known as A (and sometimes as A) by its counsel Mr Alistair Sherriff, made an application under section 106(2)(d) of the Medical Practitioners Act 1995 for orders prohibiting the publication of the name of the hospital:
  - (a) Prior to the Tribunal hearing (which is to commence on 7 August next)
  - (b) During the Tribunal hearing
  - (c) In the Tribunal's decision; and
  - (d) In any publication ordered under section 138 of the Act.
2. Mr Sherriff also made an application for the same orders on behalf of:
  - (a) Dr E (xx)
  - (b) Ms B (nurse)
  - (c) Ms D (nurse)
  - (d) Ms C (nurse)
3. Essentially the grounds upon which he relied were that it was desirable to make the orders having regard to the interests, including the privacy interests, of all the applicants, and to the public interest and also those grounds contained in the affidavit of xx, the Managing Director of A.
4. Dr E was also represented by Ms Isobel Egerton who participated in the hearing, and who supported the application made by Mr Sherriff and endorsed the submissions that he made.
5. Ms Gaeline Phipps, who represented Dr Simmonds, told the Tribunal that Dr Simmonds did not propose to make any further application regarding suppression of his name following the Tribunal's decision of 13 June 2003. However, Ms Phipps supported the applications made on behalf of A, the nurses and Dr E and also endorsed Mr Sherriff's submissions.

6. Ms Morag McDowell, the Director of Proceedings, (the Director) relied on her written submissions and reaffirmed the principles of “*open justice*”. She confirmed that Dr E would not be called as a witness at the hearing and that no criticism would be levelled at him.
7. It appears from the Director’s written submissions and from her stance at the hearing that she will abide the Tribunal’s decision.

### **The Decision**

8. The Tribunal was not persuaded that, at this early stage, it should make orders which were final or which covered the Tribunal’s decision, and any publication ordered under section 138 of the Act.
9. The Tribunal is disposed to make interim orders prohibiting the publication of the names of A, Dr E and the three nurses until the conclusion of the evidence and submissions.
10. Once the Tribunal has heard all the evidence and the submissions of counsel it will be in a more informed position to consider whether it should make final orders regarding all or any of the applicants.
11. If the Tribunal is not persuaded at that stage that it should make final the interim prohibition orders in respect of one or more of the applicants then it will give that or those applicants a further opportunity to address the Tribunal before the applications are dealt with on a final basis.
12. As the hearing relating to Dr Simmonds is due to commence on 7 August, this decision is being released without reasons but, should they be necessary, a supplementary decision with reasons will be delivered at a later time.

## Orders And Conclusion

13. The Tribunal therefore makes the following orders:

- (a) The hearing shall be held in public.
- (b) There will be an interim order prohibiting the publication of the names of the following organisation and persons until all the evidence regarding the charge against Dr Simmonds has been heard and the submissions of counsel have been presented:
  - (i) A
  - (ii) Dr E (xx)
  - (iii) Ms B (nurse)
  - (iv) Ms D (nurse)
  - (v) Ms C (nurse)
- (c) The application for permanent orders prohibiting the publication of the names of the above organisation and persons shall be considered further by the Tribunal with opportunity for their respective counsel to address the Tribunal further once all the evidence has been heard and the submissions of counsel on behalf of Dr Simmonds and the Director of Proceedings have been presented.

**DATED** at Wellington this 4<sup>th</sup> day of August 2003

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S M Moran

Deputy Chair

Medical Practitioners Disciplinary Tribunal