MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 234/03/104D

IN THE MATTER of the MEDICAL PRACTITIONERS ACT 1995

AND

IN THE MATTER of disciplinary proceedings against P medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Tuesday 8 July 2003

PRESENT: Dr D B Collins QC - Chair
Dr F E Bennett, Mrs J Courtney, Professor W Gillett,
Dr L F Wilson (members)

APPEARANCES: Ms T Baker for the Director of Proceedings
Mr H Waalkens for respondent
Ms G J Fraser - Secretary
(for first part of call only)

The Application

1. Dr P is an xx. He practises in xx. On 11 April 2003 the Director of Proceedings charged Dr P with a disciplinary offence. The details of the charge are explained in the next paragraph of this decision. The charge alleges Dr P made a number of errors when managing the pregnancy of the complainant. The charge alleges Dr P's acts and omissions constitute professional misconduct (s.109(91)(b) Medical Practitioners Act 1995 ("the Act"). On 14 May 2003 Dr P applied for interim suppression of his name. That application was made pursuant to s.106(2)(d) of the Act. The application seeks an order suppressing Dr P's name, any fact which might identify him, and the geographical region where he practises until the Tribunal has determined the charge against him. On 25 June counsel for the Director of Proceedings (Ms T Baker) filed detailed and helpful submissions in opposition to the application. On 3 July counsel for Dr P (Mr H Waalkens) filed further submissions in response to those made by counsel for the Director of Proceedings. Neither party wished to make oral submissions to the Tribunal. The Tribunal convened (by way of telephone conference) on 8 July and agreed to grant Dr P's application until the commencement of the hearing of the charge (scheduled for 2 and 3 September). The Tribunal now explains the reasons for its decision.

The Charge

2. There are two particulars identified in the charge, namely:

> *"On or about 13 November 1998, or at any time after that, [Dr P] failed to obtain the informed consent of Mrs [M] to a trial of labour/scar, in that [he] failed to adequately inform her of the possible consequences for her baby were her uterus to rupture during trial of labour/scar".*
>
> *"On 8 June 1999 between 0.800 hrs and 0.900 hrs, or thereabouts, as on call consultant for the delivery suite at xx Hospital [Dr P] failed to:*
>
> *(a) Adequately assess Mrs [M]; or*
>
> *(b) Ensure that Mrs [M] was adequately assessed by a medical practitioner"*

Summary of Grounds for Application

3. The application for name suppression identifies four separate bases upon which the application is founded, namely:

> *"1. Dr P denies the charge.*
>
> *2. Any publicity of his name carries a risk of substantial damage to his practice (both public and private) and to his reputation.*
>
> *3. Publicity or identity of Dr P's name will also risk damage and unnecessary upset to his patients.*
>
> *4. His family, in particular his elderly father, is at risk of suffering harm and unnecessary upset in the event of publicity of his name/identity."*

4. Dr P swore an affidavit in support of his application. The essential points which can be extracted from that affidavit are:

4.1 Dr P graduated in xx in xx. He started practising in xx in xx. His practice is divided into four tenths private and six tenths for the local public hospital – xx.

4.2 Dr P is one of xx in xx. The other xx in xx have provided statements (annexed to Dr P's affidavit) supporting his application for name suppression.

4.3 Dr P is very concerned about the effects of adverse publicity on his practice. He explains his concern in the following way:

> *"My reputation is particularly important as a xx because I am dependant upon referrals – particularly with regard to my private practice. If my name is published in conjunction with the criticisms being made against me in this case, I am very concerned this will have a detrimental effect not only [on] my reputation but also directly upon my receipt of referrals".*

4.4 Dr P is concerned about the effects of publicity on his patients. He believes any publicity associated with the charge he is facing and which identifies him will exacerbate the risk of distress and concern for his patients.

4.5 Dr P is concerned about risks to the reputation of the public hospital in which he works and Dr P suggests that unnecessary damage may be caused to xx if his name is published in connection with the charge he is facing.

4.6 In his affidavit Dr P explains that he has had experience of medical disciplinary proceedings in the past. Dr P was apparently found guilty of conduct unbecoming a medical practitioner by a Divisional Disciplinary Committee established under the Medical Practitioners Act 1968. That "conviction" was reversed on appeal. Dr P also advises that he has been previously found guilty of conduct unbecoming a medical practitioner by this Tribunal. He was granted interim name suppression. That order was lifted after Dr P was found "guilty".

4.7 In the Tribunal's view, the key basis upon which Dr P's application is founded concerns the risk that his elderly parents may unduly suffer if the application is declined. A similar concern is expressed in Dr P's affidavit about the impact of publicity on the health of Dr P's wife. Dr P explains his family concerns in the following way:

> *"I am also worried about the impact that publication may have on my family. I have xx children who are in tender years aged xx. All of them are at boarding schools in xx (although they are regularly home in long weekends and holidays). Publication would be particularly distressing for all xx. They are sensitive children. I have not wanted to involve them in this matter and do not want to have to confront them and talk with them about it. It would be very distressing for them and for me to do so.*
>
> *I also have two elderly parents, both in their eighties who live with my wife and I in xx. Both are in frail health. My father in particular has hypertension, is a diabetic and has suffered a number of strokes. My mother would find the publication of these unproven charges particularly distressing. …*
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> *My wife is also in a desperate health situation. In 2001 she was diagnosed with xx which resulted in multiple and extensive surgical treatment. Our family is only just now recovering from this. We will never get over it but publicity at this time would be an over-bearing stress for us to have to cope with."*

Dr P's concerns about his parents health are verified by medical reports from two doctors who have cared for Dr P's parents.

Summary of Grounds of Opposition

5. In her submissions Ms Baker emphasises the following points:

5.1 Section 106(2)(d) of the Act emphasises that the Tribunal's hearings are to be in public. This presumption reflects the principle of openness in regular Court proceedings.

5.2 The Courts have emphasised that in exercising its discretion when considering name suppression applications the Tribunal must balance public interest considerations with the private concerns and interests of the practitioner and others.

5.3 The acknowledged presumption of innocence is not determinative of interim name suppression applications.

5.4 The evidence does not "identify very special or exceptional circumstances warranting displacement of the presumption of openness". More specifically Ms Baker submits:

- Dr P's concerns about the impact of publicity on his practice would apply to almost any practitioner charged with a disciplinary offence.
- Dr P's patients should have the ability to make an informed choice about which provider they choose. Furthermore, if interim name suppression is granted and later lifted patients may feel aggrieved that they were not informed about Dr P's circumstances at an earlier stage.
- There is no evidence which suggests that xx would be adversely affected if Dr P's application is declined.
- The Tribunal should exercise some care when deciding what weight, if any, to place on the medical reports from those who have cared for Dr P's parents.

5.5 In summary Ms Baker urges the Tribunal to decline the application on the grounds that public interest considerations outweigh the personal concerns of Dr P and his family.

Further submissions in response

6. In his helpful submissions in response to those filed by Ms Baker Mr Waalkens stresses that if the application is declined and his client is ultimately acquitted Dr P will have unnecessarily suffered damage to his reputation and practice. Mr Waalkens also stresses the observations made by the High Court in *F v Medical Practitioners Disciplinary Tribunal*[1]. Dr P (through his counsel) also submits doctors appearing in criminal courts charged with serious offences "commonly receive name suppression". Mr Waalkens also submits that name suppression should be granted because the media and public do not necessarily understand the significance of a charge of "professional misconduct" and may consider the charge to be "far more serious than in fact it is".

Principles Applicable to Interim Name Suppression Applications

7. The starting point when considering the principles applicable to interim name suppression in the medical disciplinary arena is s.106 Medical Practitioners Act 1995. Subsections 106(1) and (2) provide:

> *"(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 (again with out limitation) the privacy of the complainant (if any)) and to the public interest, it may make any one or more of the following orders: …*
>
> *(d) … an order prohibiting the publication of the name, or any particulars of the affairs, of any person."*

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[1] Unreported, HC Auckland AB 21/SW01, 5 December 2001, Laurenson J.

Public Hearing

8. Subsection 106(1) places emphasis on the Tribunal's hearings being held in public unless the Tribunal, in its discretion applies the power conferred on the Tribunal by s.106(2). Another exception to the presumption that the Tribunal's hearings will be conducted in public can be found in s.107 which creates special protections for complainants where the charge involves a matter of a sexual nature, or where the complainant may give evidence of an intimate or distressing nature.

9. The requirement in s.106(1) that the Tribunal's hearings be held in public mirrors the principle that, except in unusual and rare circumstances, regular Court proceedings are conducted in public. An effect of that principle in our regular Courts is that defendants will rarely receive name suppression. Four cases can be cited to illustrate this point:

- In *M v Police* [2] Fisher J said:

> *"In general the healthy winds of publicity should blow through the workings of the Courts. The public should know what is going on in their public institutions. It is important that justice be seen to be done. That approach will be reinforced if the absence of publicity might cause suspicion to fall on other members of the community, if publicity might lead to the discovery of additional evidence or offences, or if the absence of publicity might present the defendant with an opportunity to re-offend".*

- In *R v Liddell* [3] the Court of Appeal said:

> *"… the starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings, and the right of the media to report the latter fairly and accurately as 'surrogates of the public'…. The basic value of freedom to receive and impart information has been re-emphasised by s.14 of the New Zealand Bill of Rights Act 1990 …*
>
> *The room that the legislature has left for judicial discretion in this field means that it would be inappropriate for this Court to lay down any fettering code. What has to be stressed is the prima facie presumption as to reporting is always in favour of openness. Name restrictions as to the victims of sexual crimes are automatic (subject to the possibility in a range of cases of orders to the*

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2 (1991) 8 CRNZ 14

3 [1995] 1 NZLR 538

contrary), and they are permissible for accused or convicted persons. But they are never to be imposed lightly, and in cases of conviction for serious crime the jurisdiction has to be exercised with the utmost caution".

- In *Lewis v Wilson & Horton Ltd* [4] the Court of Appeal re-affirmed what had been said in *R v Liddell*. The Court noted:

  "… the starting point must always be the importance of freedom of speech recognised by s.14 of the New Zealand Bill of Rights Act 1990, the importance of open judicial proceedings, and the right of the media to report Court proceedings".

- In *Re X* [5] the High Court distilled the relevant principles relating to name suppression applications to a number of propositions including:

  "The principle of open justice dictates that there should be no restriction on publication except in very special circumstances."

In that case the intended victim of a crime had his name suppressed. However, that order was revoked prior to the person concerned giving their evidence in Court.

10. The cases referred to in the preceding paragraphs all involved criminal prosecutions. Apart from *Re X*, the cases cited examine the broad discretion conferred on Courts in criminal cases by s.140 Criminal Justice Act 1985 to suppress the name of an accused or convicted person.[6] It is axiomatic that medical disciplinary hearings are not criminal prosecutions.[7] Nevertheless, guidance can be derived from the criminal law jurisdiction when applying the requirement of public hearings contained in s.106(1) Medical Practitioners Act 1995 to an application for name suppression by a doctor charged with serious offending.

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4 [2000] 3 NZLR 546

5 [2002] NZAR 938

6 Section 140 Criminal Justice Act provides: Court may prohibit publication of names – (1) Except as otherwise expressly provided in any enactment, a court may make an order prohibiting the publication, in any report or account relating to any proceedings in respect of an offence, of the name, and address or occupation of the person accused or convicted of the offence, or of any other person connected with the proceedings, or any particulars likely to lead to any such person's identification.

7 *Re A Medical Practitioner* [1959] NZLR 782, *Gurusinghe v Medical Council of New Zealand* [1989] 1 NZLR 139, *Guy v Medical Council of New Zealand* [1995] NZAR 67

11. A number of decisions of the Tribunal, and appellate Courts have recognised the importance of the requirement set out in s.106(1) of the Act that hearings of the Tribunal shall be heard in public when the Tribunal considers interim name suppression applications filed by a doctor. For example: in *Harman v Medical Practitioners Disciplinary Tribunal* [8] the District Court held:

> *"The Tribunal referred in its judgment to the well known statement of principle [in] R v Liddell … That decision is to the effect that the prima facie presumption as to reporting is always in favour of openness and that in considering whether a power to prohibit publication should be exercised the starting point is the importance in the democracy of freedom of speech, open judicial proceedings and the right of the media to report the matter fairly and accurately as 'surrogates of the public'. These freedoms are re-emphasised by s.14 of the New Zealand Bill of Rights Act 1990. In this case that presumption is reinforced by the statutory injunction to the Tribunal that it should hear proceedings in public".*

12. In *F v Medical Practitioners Disciplinary Tribunal*[9] one of the many questions the Court was asked to focus upon concerned the appellant's contention that the Tribunal had mis-directed itself when deciding not to continue an interim name suppression order. It was said the Tribunal had wrongly applied the criminal law presumption of public hearings to the doctor's application to continue suppression of his name. In that case the doctor submitted that the higher public interest of "openness" in criminal hearings should not be automatically transposed to medical disciplinary proceedings. The High Court held there was a fundamental distinction between name suppression in criminal cases and those which arose in a professional disciplinary forum. The Court noted:

> *"… there is … a fundamental distinction, but on closer examination the impact of this is likely to be more apparent rather than real".*

13. The Court proceeded to say s.106(2) Medical Practitioners Act 1995 required the Tribunal to take into account the interests of the practitioner. The Court said in the context of that case (the practitioner had been found guilty of conduct unbecoming a medical practitioner) the Tribunal should have regard to the possibility:

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8 DC Auckland NP 4275/00, 3 May 2002, J Doogue DCJ

9 Supra

> *"… that the charges brought against the practitioner might be found to be unfounded or so trivial that a finding of misconduct is not warranted. In such a case the practitioner will continue to practice. Therefore it is reasonable that the right to practice should not be prejudiced by the practitioner being identified in relation to allegations which do not, at the end of the day, have any bearing on his ability to do so.*
>
> *… therefore pending determination of the charges it will usually be quite reasonable in most cases to make interim orders for non-publication of name"* (emphasis added).

The Court proceeded to observe that if a doctor is found liable following a disciplinary hearing then there is a strong expectation the doctor's name will be published.

14. The suggestion in *F* that it would be quite reasonable in most cases to make interim orders for name suppression pending determination of disciplinary charges against a doctor is a clear indication from the High Court that the Tribunal should give favourable consideration to applications for name suppression pending determination of disciplinary charges against the doctor. The observations of the High Court must carry considerable weight.

15. Mr Waalkens candidly acknowledged that the comments of the learned Judge in *F* were *obiter dicta.* With the greatest of respect and deference to the High Court Judge, the Tribunal believes it must assess each application for name suppression on its merits and faithfully apply the legislative criteria set out in s.106(2) Medical Practitioners Act 1995 when considering name suppression applications.

16. It would be unfortunate if the idea were to gain currency that there is a presumption in favour of name suppression whenever a doctor applies to the Tribunal under s.106(2)(d) to have their name suppressed pending determination of disciplinary charges. Such a presumption could not be reconciled with the Tribunal's duty to carefully exercise the discretion conferred upon the Tribunal by s.106(2) after applying the criteria specified by Parliament.

S.106(2) Considerations

Interests of any Person

17. In considering whether or not it is desirable to grant an order suppressing publication of a practitioner's name the Tribunal is required to have regard "to the interests of any person". The "interests of any person" include the unfettered interests of a complainant to privacy.

18. Undoubtedly the interests of any person include the interests of Dr P. The Tribunal may also have regard to persons other than the practitioner as well as the complainant. In this case the interests of the practitioner's family, the doctor's patients, and the public hospital in which he works have been brought to the Tribunal's attention as factors the Tribunal should take into account in assessing Dr P's name suppression application.

Interests of the Practitioner

19. Dr P has stressed to the Tribunal that his reputation is very important because his private practice depends on referrals from general practitioners. Dr P is concerned that if his application is declined any publicity which ensues will damage both his reputation and his practice.

20. The Tribunal has given careful consideration to these concerns but does not find them persuasive. The Tribunal accepts that if Dr P's application is declined, and publicity is given to the fact that he has been charged there may be some damage to Dr P's reputation and practice, but in the Tribunal's assessment, damage of that kind is likely to be comparatively insignificant. In making these observations the Tribunal notes that it is not uncommon for very serious allegations to be heard by the Tribunal which undoubtedly impact on the standing and reputation of the doctor concerned. Allegations of sexual and drug abuse are examples of charges in this category. The allegations against Dr P focus on the way he is said to have managed one xx case. The circumstances of this case is such that declining Dr P's application may cause some harm to his reputation and practice but if he does suffer any harm it is not likely to be significant or long lasting.

21. Having made these observations the Tribunal also acknowledges that it would be unfortunate if Dr P's reputation and practice were damaged by reason of his name being associated with allegations which have not been proved at this juncture.

22. When considering Dr P's interests the Tribunal agrees entirely with Ms Baker's submission that there is nothing in Dr P's application which distinguishes him from most other doctors charged with a professional disciplinary offence.

Interest of Practitioner's Children

23. Dr P has invited the Tribunal to have regard to the interests of his xx children aged xx whom he describes as "sensitive children". The Tribunal accepts that any publication of Dr P's name in relation to the charge will cause his children distress. However, there is no evidence before the Tribunal to suggest Dr P's children will suffer emotional injury or ill health if his application is declined. It would be unusual if immediate members of a doctor's family were not concerned and distressed by publicity associated with a disciplinary charge against a doctor. Normally when stress and emotional harm to members of a doctor's family is advanced as a ground for name suppression the Tribunal has the benefit of medical evidence explaining the effects upon the person concerned if publicity occurs which identifies a doctor with the charge. There has been no evidence of that kind provided to the Tribunal in relation to Dr P's children. In this regard there is considerable force in the submission of Ms Baker that there is no evidence before the Tribunal which points to unusual or exceptional circumstances which justifies a granting of interim name suppression.

xx

24. Dr P has raised a concern that his public employer, xx, may suffer unnecessary damage if his application is declined. The Tribunal does not accept this proposition. There is no evidence to suggest Dr P's public employer will suffer any harm if Dr P's name is published in association with the charge.

Other xx

25. The Tribunal is mindful that the other xx in xx support Dr P's application, notwithstanding the possibility they will be unfairly linked with the charge if Dr P's name is suppressed. Whilst the Tribunal has taken aboard the views of the other xx in xx, the Tribunal does not believe their attitude to the application is particularly persuasive.

Practitioner's Parents and Wife

26. The Tribunal has placed considerable weight on the state of health of Dr P's parents, and, to a lesser extent, his wife.

27. The Tribunal has had the benefit of a report from a xx general practitioner who explains that he has responsibility for the medical care of Dr P's parents. The Tribunal has been told that Mr P senior is eighty years old and suffers diabetes, cardiovascular disease and moderate dementia. The dementia involves emotional liability and anger and threatening behaviour towards Mr P senior's caregivers, who are Dr P and his wife. Mrs P senior is seventy-nine years old and also suffers from progressive dementia as well as hypertension.

28. The Tribunal has been told that the dementia and other health problems suffered by Dr P's parents are such that publication of Dr P's name in association with the charge "would have an adverse effect on [the] health" of Mr and Mrs P senior. These concerns and observations are supported by a report from a second xx general medical practitioner who has previously cared for Mr and Mrs P senior.

29. The Tribunal has not received any medical reports concerning the health of Dr P's wife who underwent extensive treatment for xx in 2001. The Tribunal accepts that whilst Mrs P has now recovered from her ordeal, she is likely to succumb to considerable stress if her husband's name is published in association with the charge.

30. In the Tribunal's view, the evidence concerning the health of Dr P's parents, and to some extent, his wife, are important considerations which need to be carefully weighed against

the public interest factors which are examined further in paragraphs 33 to 48 of this decision.

Interests of the Complainant

31. No submissions have been received which specifically relate to the complainant's personal interests. The complainant's interests have been merged with the submissions to the Tribunal from Ms Baker. That is to say the complainant associates herself with the submission that it is in the public interest that Dr P's name not be suppressed.

32. The complainant has not yet sought name suppression. However because the matters contained in the notice of charge may refer to personal factual concerns the Tribunal has deliberately refrained from identifying the complainant in this decision.

Public Interest

33. S.106(2) requires the Tribunal to have regard to the "public interest" when determining whether or not to suppress publication of the name of an applicant.

34. In *S v Wellington District Law Society*[10] the High Court examined the concept of "public interest" in relation to an application to suppress the name of a lawyer subject to disciplinary proceedings. In considering a provision in the Law Practitioners Act 1982 similar to s.106(2) Medical Practitioner's Act 1995, a full bench of the High Court said:

> *"… 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 were to 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 a practitioner, when exercising a discretion whether or not to prohibit publication".*

35. More specifically, in *Re X* Hammond J reiterated the "public interest" considerations stated in a number of criminal cases. His Honour said the following about "public interest":

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[10] [2001] NZAR 465

> *"… public interest in knowing the name of an offender is a very powerful one. In the case of an offender, the absence of publicity may cause suspicion to fall on other members of the public. The publicity may lead to the discovery of additional evidence of offences, and the absence of publicity may allow an offender to re-offend."*

36. The following "public interest" considerations have been evaluated by the Tribunal when considering Dr P's application:

- The public's interest in knowing the name of a doctor accused of a disciplinary offence;
- Accountability and transparency of the disciplinary process;
- The importance of freedom of speech and the right enshrined in s.14 New Zealand Bill of Rights Act 1990 [11];
- The extent to which other doctors may be unfairly implicated if Dr P 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 alleged offending.

37. Each of these considerations will now be examined by reference to Dr P's application.

Public interest in knowing the name of a doctor accused of a disciplinary offence

38. Prior to the Medical Practitioners Act 1995 coming into force, medical disciplinary proceedings were heard in private. The Medical Practitioners Act 1968 conferred upon the Medical Council and the Medical Practitioners Disciplinary Committee the power to direct that the effects of any orders made by those bodies be published in the New

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[11] "Freedom of expression – Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form".

Zealand Medical Journal [12]. That power effectively enabled the Medical Council and Medical Practitioners Disciplinary Committee to publish the name of a doctor after they had determined disciplinary proceedings against the doctor.

39. Section 106 and 107 of the Medical Practitioners Act 1995 reflect Parliament's wish that the Medical Practitioners Disciplinary Tribunal conduct its hearings in public. Furthermore, Parliament determined that unless the grounds for suppression set out in s.106(2) and 107 are established the names of those who appear before the Tribunal are able to be published. When the Medical Practitioners Bill was introduced into Parliament in 1994 the then Minister of Health, the Hon J Shipley said:

> *" A major criticism of the existing disciplinary procedure is that hearings are held in private. In order that justice is seen to be done the Bill provides for hearings to be held in public, except that, after having regard to the interests of any person and to the public interest, the Tribunal may order that part or all of a hearing should be heard in a private session, or indeed, prohibit the publication of any report or account of any part of the hearing or any materials produced at the hearing …. The Tribunal will be able to make an order prohibiting the publication of the name or any particulars of the affairs of any person".*[13] (emphasis added)

These intentions were achieved when sections 106 and 107 were enacted.

40. It is important to note that those who promoted the new legislation were concerned that the public desire to know what was happening in medical disciplinary cases was frustrated by the provisions of the 1968 Act which required disciplinary hearings to be heard in private. Parliament responded to those concerns by enacting sections 106 and 107 Medical Practitioners Act 1995 so as to fulfil the public's wish to know, inter alia, the identity of doctors who appear before the Medical Practitioners Disciplinary Tribunal. Doctors wishing to apply for suppression of their name when they appear before the Tribunal need to appreciate that Parliament clearly expected that the identity of doctors charged with a disciplinary offence before the Tribunal would, generally, be able to be published.

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12 S.65 Medical Practitioners Act 1968

13 New Zealand Parliamentary Debates vol 544 p 5065

Accountability and Transparency of the Disciplinary Process

41. It is in the public interest, and the interests of the medical profession for the medical disciplinary process to be transparent. Associated with transparency is the desirability of ensuring the profession and public have confidence in knowing those who appear before the Tribunal will be held accountable if their conduct justifies a disciplinary finding against them. The requirements of transparency and accountability are factors which tend to counteract suppression of the name of a practitioner who appears before the Tribunal.

Importance of Freedom of Speech and Section 14 New Zealand Bill of Rights Act 1990

42. The public interest in preserving freedom of speech and the ability of the media 'as surrogates of the public' to report Tribunal proceedings have been stressed on numerous occasions by the Tribunal and appellate courts. The Court of Appeal in *R v Liddell* and *Lewis v Wilson & Horton Limited* stressed:

> *"… the importance in a democracy of freedom of speech, open judicial proceedings and the right of the media to report [proceedings] fairly and accurately as 'surrogates of the public' "*

is an important factor which weighs against suppressing the name of an accused. The same considerations apply to doctors charged with an offence before the Medical Practitioners Disciplinary Tribunal.

Other Doctors May Be Unfairly Impugned

43. A further factor, in the public interest, which doctors seeking name suppression must overcome is the concern that by suppressing the name of a practitioner charged with a disciplinary offence, other doctors may be unfairly suspected of being the doctor charged. This point has been emphasised on a number of occasions in criminal courts where Judges have declined name suppression to avoid suspicion falling on other members of the public.

44. Dr P, has addressed this concern by obtaining the consent of the other xx in xx to his application, even though they could be unfairly suspected of being linked to the charge if

Dr P's name is suppressed. The Tribunal proposes to deal with this particular issue by directing that nothing be published which identifies Dr P as being an xx in xx.

Possibility of Disclosure of Additional Evidence

45. A reason sometimes advanced in criminal cases for declining name suppression is that by publishing the name of an accused further evidence may come to hand. Experience has taught that publicity about alleged sexual offending sometimes results in further evidence of alleged offending being brought to the attention of the authorities. The possibility that such further evidence will be disclosed if a doctor's name is published is a further factor in the public interest against suppressing the identify of a doctor charged before the Tribunal.

46. In the case before the Tribunal the allegations relate to events said to have occurred late 1998 and 1999. No other charges have been brought against Dr P during the intervening time. The Director of Proceedings has not suggested that there is any likelihood of further evidence coming to light if Dr P's application is declined.

47. The fact there is one charge against Dr P stemming from one complainant and relating to events that are said to have occurred more than 4 years ago are factors the Tribunal bears in mind when assessing the public interest in relation to Dr P's application.

The Extent to Which the Absence of Publicity May Allow an Opportunity for Further Alleged Offending

48. Name suppression applications are sometimes declined in criminal cases in order to minimise the opportunity for an alleged offender to embark on further alleged offending. This consideration is mentioned by the Tribunal for the sake of completeness. There is nothing to suggest that this is a genuine concern in this case.

Tribunal's Decision

49. The Tribunal has decided unanimously, albeit by a narrow margin, to grant Dr P's application up until the commencement of the hearing of the charge he faces. The reasons for the Tribunal's decision can be stated succinctly. The Tribunal believes that the concerns it has about potential harm to the health of Dr P's parents, and to a lesser extent

his wife, slightly outweigh the public interest considerations identified in paragraph 36 of this decision. The application would have been declined had the Tribunal not received the evidence it has relied upon concerning the likely adverse effects on the health of Mr and Mrs P senior if the application were declined.

50. Dr P's name, any matters which could identify him, and the fact that he is a xx practising in xx are suppressed until the commencement of the hearing of the charge on 2 September.

DATED at Wellington this 21st day of July 2003

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D B Collins QC

Chair

Medical Practitioners Disciplinary Tribunal