MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 246/03/108D

IN THE MATTER of the MEDICAL PRACTITIONERS ACT 1995

AND

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

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Thursday 7 August and Thursday 4 September 2003

PRESENT: Dr D B Collins QC - Chair
Dr F E Bennett, Mrs J Courtney, Dr A R G Humprhey,
Dr J L Virtue (members)

APPEARANCES: Ms K L Davies – Hearing Officer
(for first part of call only)

COUNSEL: Ms M McDowell and Mr M Heron for Director of Proceedings

Mr H Waalkens for respondent

Decision on the application for Interim Name Suppression

Introduction

1. Dr B is a general medical practitioner in xx. On 5 June 2003 the Director of Proceedings[1] laid a disciplinary charge against Dr B. The particulars of the charge are explained in paragraph 2 of this decision. On 7 July Dr B applied for an interim order suppressing publication of her name or any fact that might identify her until the Tribunal determined the charge against her. That application was made pursuant to s.106(2)(d) Medical Practitioners Act 1995 ("the Act"). The application was opposed by the Director of Proceedings. The Tribunal convened to hear the application (by telephone conference) on 7 August and 4 September 2003. The Tribunal has determined that it will not grant Dr B the orders she has sought. In this decision the Tribunal will explain why Dr B's application is declined

The Charge

2. The Director of Proceedings has charged Dr B with professional misconduct.[2] The charge focuses on the way Dr B dealt with a patient on 8 and 9 August 2001. There are four particulars to the charge. They allege:

> *"1. … in the afternoon of 8 August 2001 [Dr B] failed to:*
>
> *1.1 Undertake an adequate clinical assessment and/or clinical examination of [her] patient … and/or*
>
> *1.2 Ensure adequate investigations were undertaken to determine the cause of [the patient's] clinical presentation;*

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1 The office of the Director of Proceedings was created by section 15 Health and Disability Commissioner Act 1994

2 Section 109(1)(b) of the Act

and/or

2. When consulted by [the patient] by telephone on 9 August 2001 [Dr B] failed to arrange and/or undertake an adequate re-assessment of [the patient's] clinical condition;

and/or

3. On 9 August 2001, in the absence of an adequate clinical examination, and/or re-assessment of [the patient's] clinical condition, [Dr B] prescribed a change of her medication by telephone;

and/or

4. Between 8 and 9 August 2001 [Dr B] failed to adequately document the clinical consultations with [the patient]."

The charge is to be heard in Napier on 8, 9 and 10 October 2003.

Basis of Application

3. The application identifies four specific grounds for applying for interim name suppression. Those grounds are:

3.1 Dr B denies the charge.

3.2 The charge is "professional misconduct" and alleges Dr B failed to diagnose the patient's condition and that as a result of that failure the patient died.

3.3 Publication of Dr B's name causes a risk of substantial damage to her reputation.

3.4 Publication of Dr B's name will "*risk damage and upset to her family*".

4. In her affidavit in support of the application Dr B explains that she graduated (MD) in the xx in 1991 and moved with her family to New Zealand in 2001. She obtained probationary registration as a medical practitioner in this country in March 2002 and has worked in two practices in xx since then. Dr B has told the Tribunal that the charge she is facing is the only formal complaint that has ever been made against her.

5. Dr B is married and has two young children (aged xx and xx). She is concerned that any publicity about this case which identifies her "*would seriously affect [her] family*". Dr B and her husband have found the events leading to the disciplinary hearing extremely stressful.

6. In her affidavit Dr B explains she is proud of her reputation and "*…that adverse publicity will seriously and unfairly affect [her] reputation"*. Dr B says she *"… has worked hard to build [her reputation] and it is a fundamental part of the way [she] practises medicine"*. Dr B is also concerned that adverse publicity will affect her relationship with her colleagues. She observes that she is currently enjoying a good working relationship with her fellow practitioners *"…and whilst they are aware of the charge and the circumstances surrounding it in general [she is] concerned that publicity could threaten [her colleagues] support."*

Basis of Opposition

7. The Director of Proceedings' grounds for opposing the application can be succinctly summarised in the following way:

   7.1 Section 106 of the Act contains a presumption that the Tribunal's hearings are to be in public and that as a consequence there should be no restriction on publication except in very special circumstances.

   7.2 The evidence submitted to the Tribunal by Dr B does not identify any special circumstances which warrant displacement of the presumption of openness. In particular, the Director of Proceedings says:

   - Dr B's reliance on the presumption of innocence is not unusual, indeed, it is a consideration which applies to almost every practitioner who is charged with a disciplinary offence.

   - Similarly, there is nothing unusual in Dr B's plea that she is at risk of suffering harm to her reputation. The Director of Proceedings submits: "… *it is*

unlikely there will ever be a case where a practitioner does not hold concerns for their reputation and there is, therefore, nothing unusual about Dr B's circumstances".

- Dr B has not provided any evidence (medical or otherwise) that would suggest the impact of publicity on her family is sufficiently significant to warrant name suppression.

- There is nothing unusual in a doctor charged with a disciplinary offence suffering stress and that this factor does not rebut the presumption of openness.

7.3 The Director of Proceedings submits public interest factors outweigh Dr B's personal circumstances, and the circumstances of her family. In particular the Director of Proceedings places reliance on:

- The public's interest in knowing about disciplinary proceedings brought against a practitioner.

- The need for transparency and openness in the disciplinary process.

- The importance of freedom of speech and the right of the media to report proceedings of interest to the public.

- The possibility of other doctors being unfairly impugned if Dr B's application is granted.

- The public's right to make an informed choice regarding their choice of practitioner.

Submissions in Response

8. On 28 August 2003 counsel for Dr B filed further submissions in support of the application. In those submissions attention was drawn to a recent decision of the District

Court in *Director of Proceedings v MPDT & Anor*[3]. In that case the District Court upheld the decision of a majority of three members of the Tribunal to grant interim name suppression to a doctor charged with disciplinary proceedings following a case in which a patient died because of alleged deficiencies in the way he was managed by his practitioner. The District Court's decision appears to have been partially based on the grounds that:

> *"There [was] no allegation of impropriety in relationships with patients, or continued negligent treatment or conduct which needs to be publicly disclosed."*

In that case the District Court suggested (but did not decide) that it "would be reasonable" to continue the interim name suppression order until the Tribunal had determined the charge.

Principles Applicable to Interim Name Suppression Applications

9. The starting position when considering the principles applicable to name suppression in the medical disciplinary arena is s.106 of the Act. 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: …*
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> *(d) … an order prohibiting the publication of the name, or any particulars of the affairs, of any person."*

10. Subsection 106(1) of the Act places emphasis on the Tribunal's hearings being held in public unless the Tribunal, in its discretion applies the powers conferred on the Tribunal by s.106(2) of the Act. 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

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[3] District Court, Wellington, 21 August 2003, Ongley DCJ

complainants where the charge involves a matter of a sexual nature, or where the complainant may give evidence of an intimate or distressing nature.

11. The Tribunal recognises that whereas s.106(1) of the Act contains a presumption that the Tribunal's hearings shall be held in public, there is no presumption in s.106(2) of the Act. When the Tribunal considers an application to suppress the name of any person appearing before the Tribunal, the Tribunal is required to consider whether it is desirable to prohibit publication of the name of the applicant after it has regard to:

11.1 The interests of any person (including the unlimited right of the complainant to privacy); and

11.2 The public interest.

12. It is often stressed to the Tribunal that applications for interim name suppression made by those charged with offences that have not been considered and determined by the Tribunal should be viewed more favourably than applications for name suppression made by those who have been found guilty of a disciplinary offence. The Tribunal recognises that doctors who apply for interim name suppression pending determination of a disciplinary charge are presumed to be innocent. The Tribunal also appreciates that often publicity about the fact that a charge has been laid will cause harm to a doctor's reputation, and that in some instances the damage will not be repaired even if the doctor is ultimately found not liable. This concern was acknowledged in the following way by Fisher J in *M v Police*[4]

> *"…the stigma associated with a serious allegation will rarely be erased by a subsequent acquittal. Consequently when a Court allows publicity which will have serious adverse consequences for an unconvicted defendant it must do so in the knowledge that it is punishing a potentially innocent person".*

13. In this case the Tribunal has taken full account of the fact Dr B is presumed to be innocent.

14. It is convenient to examine public interest considerations before focusing upon the interests of Dr B and her family.

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[4] (1991) CRNZ 14

Public Interest

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

15.1 The public's interest in knowing the name of a doctor accused of a disciplinary offence;

15.2 Accountability and transparency of the disciplinary process;

15.3 The importance of freedom of speech and the right enshrined in s.14 New Zealand Bill of Rights Act 1990 [5];

15.4 The extent to which other doctors may be unfairly implicated if Dr B is not named;

15.5 The possibility that publicity might lead to discovery of additional evidence;

15.6 The extent to which the absence of publicity may allow an opportunity for further alleged offending.

16. Each of these considerations will now be examined by reference to Dr B's application. In analysing Dr B's application under these headings the Tribunal acknowledges that some of the public interest considerations identified in paragraph 15 are closely interwoven.

The Public Interest in knowing the name of a doctor accused of a disciplinary offence.

17. The requirement in s.106(1) of the Act that the Tribunal's hearing 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 (in criminal cases) and parties (in civil proceedings) rarely receive name suppression. The fact that name suppression is rarely given in our regular Courts is a logical consequence of the presumption that hearings are held in public. If members of the public are able to attend a

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[5] "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".

hearing and see for themselves who the defendant or parties in the case are, it follows that members of the public unable to be physically present at the hearing should not be denied the opportunity of learning about the identity of persons appearing in our regular Courts. This analysis applies with equal force to hearings of the Tribunal.

18. The following cases illustrate the importance of openness in judicial proceedings:

18.1 In *M v Police*[6] 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. ".*

18.2 In *R v Liddel* [7] the Court of Appeal said:

> *"… the starting point must always be the importance in a democracy of … open judicial proceedings, and the right of the media to report the latter fairly and accurately as 'surrogates of the public'…".*

18.3 In *Lewis v Wilson & Horton Ltd* [8] the Court of Appeal re-affirmed what it had said in *R v Liddell*. The Court noted:

> *"… the starting point must always be… the importance of open judicial proceedings, and the right of the media to report Court proceedings".*

18.4 In *Re X*[9] 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".*

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6 (supra)
7 [1995] 1 NZLR 538
8 [2000] 3 NZLR 546
9 [2002] NZAR 938

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

19. The cases referred to in paragraph 18 all involved criminal prosecutions. Apart from *Re X* the cases cited examined 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.[10] It is axiomatic that medical disciplinary hearings are not criminal prosecutions[11] and that in some respects they are akin to civil proceedings. Nevertheless, some guidance can be derived from the criminal law jurisdiction when applying the requirement of public hearings contained in s.106(1) of the Act to an application for name suppression by a doctor pending determination of a disciplinary charge by the Tribunal. Sight should also not be lost of the fact that it is very difficult for a party in civil proceedings to obtain an order suppressing their name. Part of the reasons for this can be found in the judgments of the House of Lords in *Scott v Scott*[12] and *Home Office v Harman*[13] where Lords Shaw and Diplock explained the reasons why civil proceedings are invariably heard in open Court, and why the identity of parties in a civil case is rarely suppressed. Their Lordships stressed the rationale for this state of affairs was not to nurture public curiosity. Their Lordships relied on Bentham's statement that *"publicity is the very soul of justice"*. Bentham's comments have been interpreted to mean that open judicial proceedings are essential in a democracy in order to ensure Judges are *"kept up to the mark"* (to quote Lord Diplock in *Home Office v Harman)*. The same observations apply to proceedings conducted by the Tribunal.

20. 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 name suppression applications filed by

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[10] 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, 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.

[11] *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

[12] [1913] AC 47

[13] [1982] 1 All ER 532

a doctor. For example: in *Harman v Medical Practitioners Disciplinary Tribunal* [14] 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".*

21. In *F v Medical Practitioners Disciplinary Tribunal* [15] 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".*

22. 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:

> *"… 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*

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[14] DC Auckland NP 4275/00, 3 May 2002, J Doogue DCJ

[15] Unreported HC Auckland AP 21-SW01, 5 December 2001, Laurenson J

> *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.

23. 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 to name suppression pending determination of disciplinary charges against the doctor. The observations of the High Court must carry considerable weight.

24. It must be said however that the comments of the learned Judge in *F* were *obiter dicta.* Similarly, the comments of the District Court Judge in *Director of Proceedings v MPDT & Anor* referred to in paragraph 8 of this decision were also *obiter dicta*. With the greatest of respect and deference to the Judges who decided those cases, 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.

25. 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. The Tribunal makes these observations against the background of doctors frequently applying for name suppression when charged with a disciplinary offence. Since June 2002 eighteen of the doctors charged with disciplinary offences have been eligible to apply for name suppression. Twelve of those eighteen doctors applied for interim orders suppressing their name.

26. The charge against Dr B is to be heard in Napier during the three day period commencing 8 October. The hearing must be held in public. Any person who wishes to do so may attend the hearing, listen to the evidence and quickly learn Dr B has been charged with professional misconduct. The fact Dr B's name will be frequently referred to in the public hearing of the charge is a factor which weighs against suppressing publication of Dr B's name prior to and during the course of the hearing. Because Parliament has determined that the Tribunal's hearing should be in public the Tribunal must be hesitant before suppressing from the general public anything which members of the public could ascertain by attending the Tribunal's hearing.

Accountability and Transparency of the Disciplinary Process

27. A major criticism of the disciplinary regime under the Medical Practitioners Act 1968 was that disciplinary hearings were not heard in public and that, as a consequence, if the identity of a doctor charged with a disciplinary offence was ever made public this did not occur until after the disciplinary body had determined the charge. This in turn led to claims that the disciplinary process was neither transparent nor accountable. 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".*[16] (emphasis added)

28. It is important to note that those who promoted the new legislation were concerned that the public's desire to know what was happening in medical disciplinary cases was frustrated by the provisions of the 1968 Act which required disciplinary hearings be heard in private. Parliament responded to those concerns by enacting sections 106 and 107 of

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[16] New Zealand Parliamentary Debates vol 544 p 5065

the Act to address suggestions that the medical disciplinary regime was not transparent or accountable. Both the profession and public should derive assurance about the transparency and accountability of the medical disciplinary process. Assurance of this kind is enhanced through the public and profession knowing the identity of those who are required to appear before the Tribunal in response to allegations they have failed to adhere to the standards expected of them.

29. In the case of Dr B the Tribunal believes there is considerable public interest in maintaining accountability and transparency in the disciplinary process. The Tribunal is also of the view that Parliament wished to strengthen the accountability and transparency of the medical disciplinary process when it enacted s.106 and 107 of the Act and that Parliament also expected that the identity of doctors charged with a disciplinary offence would generally be able to be published prior to and during the course of the Tribunal's hearing.

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

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

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

31. The Tribunal does not know if representatives of the media propose attending the hearing of the charge against Dr B. Generally representatives of the media do attend the Tribunal's hearings. Regardless of whether or not the media will be present at Dr B's hearing, the Tribunal takes the view that if the media do wish to report the Tribunal's proceedings and identify Dr B then the importance of freedom of speech and s.14 New Zealand Bill of Rights Act 1990 are factors which weigh against suppressing Dr B's name.

Other Doctors may be Unfairly Impugned

32. 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.

33. Dr B is one of many medical practitioners in xx. The size of the xx medical community is such that it is unlikely any particular doctor will be linked with the charge before the Tribunal if Dr B's name is suppressed. If there is any possibility other members of the xx medical community will be unfairly suspected of being the doctor charged in this case, then the Tribunal could address that concern by suppressing details of the fact Dr B practises in xx.

Possibility of Disclosure of Additional Evidence

34. 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. 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 identity of a doctor charged before the Tribunal.

35. In the case before the Tribunal the allegations relate to events said to have occurred in August 2001. No other charges have been brought against Dr B. In her affidavit Dr B stresses that aside from this charge she has not been subject to any disciplinary charges or complaints. The Director of Proceedings has not challenged this evidence.

36. The Tribunal recognises that the fact the charge relates to the management of one patient over a two day period and that the events in question occurred two years ago are factors which weigh against the public interest in allowing publication of Dr B's name.

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

37. 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 minority members of the Tribunal for the sake of completeness. Nothing has been put before the Tribunal to suggest this is a legitimate concern in this case.

Summary of Public Interest Considerations

38. The Tribunal believes there are three public interest considerations which weigh heavily against Dr B's application. Those factors are:

38.1 The public's interest in knowing the name of a doctor accused of a disciplinary offence.

38.2 Accountability and transparency of the disciplinary process.

38.3 The important of freedom of speech and the right enshrined in s.14 New Zealand Bill of Rights Act 1990.

The Tribunal has balanced those three public interest considerations against the interests of Dr B and her family.

Complainant's Position

39. The Director of Proceedings has not advanced any specific submissions concerning the complainant in this case. The complainant's position is subsumed within the general public interest considerations relied upon by the Director of Proceedings.

Dr B's Interests

Reputation

40. Dr B refers to her reputation and her concern that her reputation will be damaged if her application for interim name suppression is declined.

41. The Tribunal does not underestimate Dr B's concerns. However, it needs to be recorded that almost every doctor charged with a disciplinary offence will be worried about harm to their reputation as a result of being charged and required to appear before the Tribunal. If Parliament had intended that doctors charged with disciplinary offences would normally be entitled to interim name suppression to protect their reputations then s.106 of the Act would have been framed very differently from the way it is worded.

42. When considering the risk of harm to Dr B's reputation it is important to view the charge in perspective. The charge is professional misconduct (not the more serious charge of disgraceful conduct in a professional respect). It is not uncommon for very serious allegations to be heard by the Tribunal which undoubtedly impact upon the standing and reputation of the doctor concerned. Allegations of sexual and drug abuse are examples of charges in this category. The charge faced by Dr B is very typical of the types of charge heard on a regular basis by the Tribunal without the identity of the doctor being suppressed.[17] In this regard the Tribunal agrees with the submissions of the Director of Proceedings when she says:

> *"…it is unlikely there will ever be a case where a practitioner does not hold concerns for their reputation and there is, therefore, nothing unusual about Dr B's circumstances."*

43. It is also to be noted Dr B has practised medicine in this country for just 2½ years. While her reputation is important to her, she is not in the category of those doctors who appear before the Tribunal after establishing their reputations over many decades.[18]

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[17] See for example, *Re Hauptfleisch (240/03/101D*)

[18] See for example, *CAC v D* 235/02/97C

44. Closely related to Dr B's concerns about her reputation is her apprehension about the impact of publicity on her relationship with her colleagues. That concern needs to be balanced against Dr B's acknowledgement in her affidavit that her colleagues are aware of the charge and have continued to support her through what has been a difficult period of time for her and her family. The support which Dr B currently receives from her colleagues is unlikely to diminish if Dr B's name is publicly linked with the charge she is facing.

Stress

45. Dr B has identified her personal stress as a factor the Tribunal should take into account when assessing her application. The Tribunal is very mindful that disciplinary proceedings invariably cause stress to any doctor who has the misfortune to be charged with a disciplinary offence. Disciplinary proceedings also usually cause distress for the doctor's immediately family.

46. Normally, when stress and related health issues are relied upon as a ground for suppressing publication of a doctor's name the Tribunal has the advantage of detailed medical or psychological evidence. Evidence of that kind has not been tendered to the Tribunal by Dr B.

47. In relation to the issue of Dr B's personal stress the Tribunal finds itself in complete agreement with the Director of Proceedings when she says:

> *"…there is unlikely to ever be a case where a practitioner does not suffer stress as a result of disciplinary proceedings. Furthermore, Dr B has not provided any medical evidence in relation to the degree of stress she has suffered. Once again there is nothing to suggest that Dr B's stress is unusual in the circumstances…"*

Dr B's Family

48. Dr B also refers to the stress caused to her husband and their young family by the events leading to the bringing of the charge as factors which justify the granting of her application.

49. The Tribunal unhesitatingly accepts that Dr B's husband and their children have been stressed and concerned by the events leading to the hearing of the charge. These difficulties are further compounded by the fact Dr B and her family interact with members of the community on a daily basis. However, there is again nothing unusual in Dr B's circumstances. It would be extraordinary if the spouse and/or children of a doctor charged with a disciplinary offence were unaffected by such an event. Again, when the stress and related health of members of a doctor's family are relied upon to justify name suppression there is normally medical evidence submitted to the Tribunal. Nothing of that kind has been tendered in this case.

Conclusion

50. The Tribunal has carefully considered Dr B's affidavit and submissions of her counsel against the public interest considerations referred to by the Director of Proceedings.

51. The Tribunal is unanimously of the view that the public interest considerations referred to in paragraphs 17 to 31 of this decision substantially outweigh the factors advanced by Dr B and her counsel in support of her application.

52. Dr B's application for interim name suppression, and for related orders that nothing be published which identifies her must be declined. Although it has not been asked to do so, the Tribunal will direct that its decision not take effect until five working days from the date recorded below so as to provide Dr B with an opportunity to appeal the Tribunal's decision if she wishes to do so.

DATED at Wellington this 16th day of September 2003

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D B Collins QC

Chair

Medical Practitioners Disciplinary Tribunal