MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO:	342/02/95C
IN THE MATTER	of the Medical Practitioners Act 1995
BETWEEN	**A COMPLAINTS ASSESSMENT COMMITTEE**
AND	**DR C** a medical practitioner of xx

DECISION OF THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

Hearing held by telephone conference on Thursday, 22 July 2010

TRIBUNAL:	Miss Sandra Moran (Chair) Professor Wayne Gillett, Dr Alistair Humphrey, Dr Janice McKenzie, Ms Jennifer Robson (Members) Ms Kim L Davies (Executive Officer)
APPEARANCES:	Neither counsel for the Complaints Assessment Committee (Mr C J Lange) nor counsel for Dr C (Mr H Waalkens QC) participated in the conference but both filed written submissions.

Introduction and Charge

1. This decision should be read in conjunction with and supplementary to the Tribunal's written decision No. 341/02/95C (the substantive decision).

2. The Tribunal found proved the charge against Dr C, a general practitioner, of disgraceful conduct in a professional respect pursuant to section 93(1)(b) of the Medical Practitioners Act 1995 (MP Act) laid on 1 October 2002 by a Complaints Assessment Committee (CAC) relating to particular 1 in that, in or about March 1985 he had sexual intercourse with his patient, Ms A, then aged 16 who was at the time or had been until recently, his patient.

3. As the conduct in the charge occurred on or about March 1985, section 218 of the Health Practitioners Competence Assurance Act 2003 (the HPDCA Act) applies.

4. Section 218 provides that if the Tribunal finds Dr C guilty of a disciplinary offence under Section 100 of the HPCA Act (which it has) in respect of conduct that occurred before the commencement of the section (which it did) then the Tribunal cannot impose a penalty that could not have been made against the practitioner at the time when the conduct occurred.

5. This means that the penalties available under the Medical Practitioners Act 1968 which was in force in March 1985, are the penalties which apply.

6. Section 58 of the Medical Practitioners Act 1968, sets out the range of penalties which may be imposed:

   6.1 The name of the practitioner can be removed from the register.

   6.2 The practitioner can be suspended from practice for a period not exceeding 12 months.

   6.3 Conditions may be imposed for a period not exceeding 3 years on the practitioner's practice for the protection of the public or in the practitioner's interests.

6.4 A fine not exceeding $1,000 can be imposed except where there is removal from the register.

6.5 The practitioner can be censured.

7. The section also provides that the practitioner may be ordered to pay any costs and expenses of and incidental to the inquiry by the Medical Council and any investigation made by the Penal Cases Committee.

Suppression Orders

8. These are referred to at paragraphs 2 to 6 of the substantive decision and are referred to again and added to in an amended form at paragraph 154 to 157 of this decision.

Submissions of CAC on Penalty

9. Mr Lange on behalf of the CAC referred to several previous decisions of the Medical Practitioners Disciplinary Tribunal (the or this Tribunal) and the Health Practitioners Disciplinary Tribunal (HPDT) addressing discipline of doctors who had engaged in sexual conduct with patients:

9.1. *Gray* (182/01/72D 22/1/01);

9.2. *Dr XX* (198/01/87D 30/4/02);

9.3. *K* (290/03/116D 28/6/04);

9.4. *Nuttal* (8/Med04/03D 18/4/05);

9.5. *Patel* (59/Med06/36D 19/9/06);

9.6. *P* (327/05/127C 15/3/07).

10. He stated those decisions referred to charges which constituted a serious breach of fundamental professional obligations in that sexual conduct between a practitioner and a patient was prohibited, and referred to the various publications issued by the Medical Council on this issue. He likened features of those cases bearing similarities to this case.

11. Mr Lange submitted there were several aggravating features in Dr C's case as follows:

11.1. Dr C's role was that of the family medical practitioner. Ms A's parents and siblings, on moving address in 1981, transferred to the Medical Centre where Dr C practised. The breach of trust which arose was not only a breach of trust between Dr C and the complainant but was a significant breach of trust between Dr C and the complainant's mother who had entrusted her children to his care.

11.2. It was through the doctor/patient relationship that Ms A was engaged by Dr C and his wife as a babysitter and referred to the Tribunal's finding [310] that Dr C told the complainant he had been attracted to her from when he had first met her.

11.3. He referred to the Tribunal's finding that there was a power imbalance and exploitation between the complainant and Dr C.

11.4. The sexual conduct arose after the complainant had been raped at a concert when she turned to Dr C for "informal counselling, comfort and support". At the time she was 16 and in a vulnerable position and Dr C was aged 32.

11.5. There was an initial instance of Dr C taking the complainant to the x area where he took an interest in her and made her feel special, and that the effect of his conduct in the circumstances would be obvious to a 32 year old professional man in his position.

11.6. Prior to the first occasion of sexual intercourse, Dr C gave the complainant alcohol and made the following comments to her:

11.6.1. About his marriage, being married at a young age, and his childhood.

11.6.2. Referred to hiring a hit man (regarding the man who had allegedly raped her).

11.6.3. Had been attracted to her and had asked her to babysit so he could get to know her better.

11.7. Dr C had engaged in conduct which was for the purpose of having the complainant receptive to his advances and then had sexual intercourse with her on two occasions, with the conduct stopping only after the complainant had discussed this with Ms W.

11.8. There has been no acceptance of responsibility by Dr C of his conduct.

11.9. After the first occasion of sexual intercourse Dr C provided the contraceptive pill to the complainant.

11.10. The conduct with the complainant occurred on two occasions.

11.11. Dr C was aware of the Medical Council's zero tolerance policy in relation to sexual relationships between doctors and patients.

11.12. Dr C entered into a settlement agreement, the effect of which was an attempt to stop the disciplinary process but without disclosure to the CAC, its solicitors or the Tribunal.

12. Mr Lange then referred to the mitigating features which were that since the time of the events in 1985 there was no evidence that Dr C had engaged in similar conduct.

13. Mr Lange sought to draw an analogy to some of the cases referred to above and some of the distinguishing features. His conclusion was that Dr C's name should be removed from the Register as an appropriate sanction having regard to the high level of seriousness of his conduct despite the intervening time. He submitted such an approach was one that sent the appropriate message to the public and the profession and achieved the purpose of maintaining high standards and good reputation of the medical profession.

14. In the event that the Tribunal concluded removal from the Register was not required then this was an appropriate case to impose a suspension and conditions on practice which he itemised, and that such conditions should be imposed for the maximum

period of three years with leave to apply to the Medical Council for review after two years.

15. The conditions which the CAC proposed were that:

15.1. Dr C undertake the Medical Council's Sexual Misconduct Assessment Test (SMAT) and such treatment and conditions as the Medical Council might impose as a result of the programme.

15.2. The Medical Council's Health Committee report on and monitor Dr C's practice and that Dr C observe and comply with terms and conditions stipulated by the Health Committee.

15.3. Dr C not work as a sole medical practitioner but work with other practitioners and in such place as approved by the Medical Council.

15.4. Dr C have mentoring to provide support and oversight of his practice to ensure safety of his practice.

16. Mr Lange submitted that, in addition, Dr C should be censured and that the maximum fine should be imposed.

17. With regard to costs, he submitted that Dr C should make a contribution to costs. He summarised the CAC costs of $15,736.62, the CAC legal assessor costs as $7,402.04 and the CAC prosecution costs of $109,024.29.

Submissions of Dr C on Penalty

18. Mr Waalkens submitted that the Tribunal's decision had had a devastating effect upon Dr C.

19. He referred to Dr C's evidence during the substantive hearing when he said that other than the present matter, he had never had any complaint made against him (other than minor issues such as fees) and that on no occasion had there been a complaint to the Health & Disability Commissioner or the Medical Council about him and nor had he any criminal convictions.

20. Mr Waalkens referred to eight references which were attached to his submissions all of which were from persons who had known Dr C professionally for a long period of time and that each of those referees was in a good position to attest to his character and reputation. Those persons include two of his partners with whom he currently works and who have worked with him for 31 years and 28 years respectively, a former practice partner who has known him for 30 years, an administrative member of staff who has known him for 33 years, two practice nurses who work with him and have known him for 29 years and 9 years respectively, an ex-practice nurse who has known him for 12 years and a health practitioner who works with him in an extended area of his work and who has known him for 13 years.

21. Mr Waalkens submitted that taking into account Dr C's own evidence that in the 25 years since the events in question he has never received a single complaint nor any stated concerns amongst those with whom he has worked most closely, of any circumstances which would give rise to concern, there can be no justified concern of a need to protect the public in this matter.

22. One of the documents presented regarding penalty is a four page report dated 26 November 2009 from Dr Peter Miller, a general and forensic psychiatrist to the Secretary of the Tribunal. Dr Miller specifically addresses (among other things) the risk to the public. He refers to the number of consultations he has had with Dr C over the years since 2003 and again prior to the writing of his report. In his professional opinion, Dr C does not have a personality disorder, alcohol or drug dependence or abuse or currently show evidence of a major mental illness.

23. He has no knowledge of any matters, other than the evidence arising from the substantive hearing, that Dr C might present a risk to the public. In Dr Miller's professional view, Dr C has shown good insight into and an apparent good appreciation of boundary issues with patients and the need, for example, to avoid improper relations or contact with patients. Dr Miller is familiar with the Medical Council's policy "Sexual boundaries in the doctor-patient relationship" and he has the strong impression that Dr C has a good appreciation of the principles which are identified in that guideline.

24. Although Dr Miller prepared his report during the substantive hearing (which took place between 23 and 27 November 2009), and before the decision of the Tribunal was known, Dr Miller stated he did not believe if the charge were proved that there was any real risk of repeat offending on Dr C's part.

25. When interviewing Dr C, Dr Miller thought that although not suffering from depression or any psychiatric disorder in 1985, Dr C and his wife were under considerable stress (at the time) due to the illness of one of their children. Dr C found it difficult to explain to Dr Miller the email correspondence between himself and the complainant during late 2000 to early 2001, which Dr Miller described as "an email affair" and which Dr C bitterly regretted. In Dr Miller's view the frequency of the correspondence, and the nature of the content suggested Dr C was overwhelmed with a feeling of passion for the complainant reciprocating her expressed feelings for him.

26. Dr Miller also referred to a life threatening accident which Dr C suffered in 1998 (about which there was evidence at the substantive hearing) which appeared to have been a significant turning point for him. Dr Miller stated the symptoms which Dr C described have persisted for almost five years at the time of his assessment and contained elements of post traumatic stress disorder and a low grade but chronic depressive mood disorder.

27. In Dr Miller's view, Dr C's mental state did not seem to be of the degree that would impair his capacity to work as a general practitioner but it has impaired his relationship with his family and his capacity to enjoy life and likely played an important part in his behaviour in late 2000/early 2001 when he embarked upon his email and other correspondence with the complainant.

28. Mr Waalkens referred to the delays in this case which included a significant delay in the making of the complaint being some 16 years after the event following which the CAC took over two years to investigate and then after the charge was issued there were numerous appeals arising from the CAC's appeal against the Tribunal's first discovery order (February 2003) until the Supreme Court decision (29 June 2008) and then a second District Court appeal filed by the CAC (13 April 2007) until the District Court's final judgment (July 2008). In all, the approximate 5½ year period

of appeals was for actions initiated by the CAC, not by Dr C, with the exception of his successful challenge in the Supreme Court from the Court of Appeal decision. He submitted that all of those delays had been significant and for which Dr C was entitled to some credit or consideration.

29. Mr Waalkens referred to Dr C's clinical trial work (to which 50% of his time is now devoted) which would suffer irreparable harm if the Tribunal either cancelled his registration or suspended him.

30. In order to continue the clinical trial work, Dr C is required to retain his registration as a medical practitioner.

31. Mr Waalkens referred to the standards which a medical practitioner is required to maintain but that it could not be said there was a need for the Tribunal to impose penalties or suspension in order to maintain those high standards in this case and nor was that the law. The purpose for those penalties was to protect the public, not to penalise the practitioner.

32. Mr Waalkens addressed various cases either distinguishing those to which Mr Lange had referred or calling in aid those which he considered more analogous to those of Dr C's situation. While he accepted that all cases are inevitably, to some extent, fact specific, he did not accept the CAC's analysis of the cases to which it had referred.

33. Mr Waalkens submitted that while the Tribunal rejected Dr C's submission that any sexual relationship grew out of the non-professional (babysitter) relationship, the Tribunal could not conclude on the evidence before it that the professional relationship, as found proved, was an intense one but rather the evidence of actual medical consultations was vague and scant.

34. The lack of intensity and the absence of direct evidence (absence of medical records) of the actual consultations significantly distinguished the cases upon which the CAC had relied and the absence of such records had been of significant prejudice to Dr C. In Mr Waalkens' submission the nature of the professional relationship and its intensity were issues of prime importance when it came to assessing penalty. Mr

Waalkens did not accept the CAC's analysis of aggravating features, many of which he asserted were non-professional issues, that is, non doctor/patient ones.

35. Mr Waalkens then addressed the conditions which the CAC sought submitting they were neither required nor reasonable in the circumstances. Again, Mr Waalkens sought to distinguish those cases the CAC cited where similar conditions had been imposed.

36. With regard to the SMAT assessment, the Medical Council's guideline in October 2004 recorded the cost of such an assessment to be between $7,000 and $10,000 which the doctor had to pay and that if this condition were ordered the Tribunal would have to consider this an aspect of the "*proportionality*" test.

37. Mr Waalkens did not accept that Dr C should have to report to the Medical Council's Health Committee as he did not have a medical condition which necessitated this.

38. With regard to the proposed condition by the CAC that Dr C not work as a sole practitioner but work with other practitioners and in such place as approved by the Medical Council, Mr Waalkens said his client had no objection to this but there was no basis to require those conditions as appropriate in this case and nor was the condition that Dr C required mentoring to provide support and oversight of his practice to ensure the safety of it, although Dr C would have no objection to those two conditions if they were imposed.

39. Mr Waalkens added that Dr C was agreeable to a condition with respect to the name suppression issues (if his name were permanently suppressed) and if a patient or prospective patient enquired of Dr C whether he was the person involved in this matter then he would confirm that he was.

40. Dr C accepted that a censure was inevitable but that such an order was a significant one for any medical practitioner and Dr C would regard it as a matter of significance.

41. With regard to a fine, Dr C was in a position to pay one.

42. Dr C was also in a position to pay a contribution towards costs. Mr Waalkens addressed this topic in detail which the Tribunal refers to when dealing with this issue under its decision on penalty.

Submissions of CAC in Opposition to Dr C's Application for Permanent Name Suppression

43. Prior to Dr C filing submissions in support of his application for permanent name suppression Mr Lange, on behalf of the CAC, filed submissions in anticipation of such an application.

44. Mr Lange referred to the general principle that where a disciplinary charge against a practitioner was proved then, in the normal course, interim name suppression was lifted.

Mrs C

45. With regard to Mrs C, the CAC adopted a neutral position of the continued suppression of her name if it were sought.

M and U

46. With regard to M and U, the sons of Dr C, the CAC did not oppose the continued suppression of their names, if sought.

Ms R/W

47. The CAC submitted that continued name suppression for Ms R (Mrs W) was appropriate as she was reluctant to be involved in the proceedings and it was necessary for a summons to be issued for her attendance. Her evidence was limited to evidence of a recent complaint and there was no countervailing public interest for the publication of her name.

Mrs L

48. The CAC submitted that continued suppression of Mrs L's name was appropriate. While she was not a witness at the hearing, her name arose during the course of it. Public interest did not require her name to be published.

Mrs T

49. The CAC sought continued name suppression for Mrs T (the mother of the complainant) as clearly the publication of her name might lead to the identification of the complainant.

No Reply by CAC

50. When Mr Lange filed his submissions on name suppression, it was in anticipation of Dr C filing submissions and seeking permanent name suppression.

51. Mr Lange stated in his initial submissions that, at the time of filing them, he was unaware of what matters may be advanced by Dr C in support of continued name suppression.

52. It should be made clear here that following the detailed submissions which Dr C's counsel filed in support of permanent name suppression, counsel for the CAC then had an opportunity to make submissions in reply but did not do so.

53. The decision which the Tribunal makes on permanent name suppression is based on the evidence and its findings arising out of the substantive hearing, the submissions of counsel, the legal principles and authorities and its overall assessment of what it considered to be "desirable" in the circumstances in accordance with the statutory regime.

Dr C's Submissions in Support of Permanent Name Suppression

54. Mr Waalkens referred to the legislative framework and to a number of cases (some of which Mr Lange had cited in his submissions). Mr Waalkens did not accept the analogies which the CAC sought to draw from certain cases but rather referred to distinguishing features and the important legal principles which have emerged from some cases which have come before this Tribunal and the Health Practitioners

Disciplinary Tribunal and from the Courts when some of those cases have gone on appeal.

55. Mr Lange addressed one of the principles which is the degree to which other practitioners might be unfairly impugned or implicated by the charges if interim name suppression were not lifted.

56. He referred to the decision of this Tribunal on 26 November 2002 when the then Chair observed at paragraph 4 of the Tribunal's decision granting Dr C interim suppression:

> *"Dr X is one of literally hundreds of 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 charges before the Tribunal if Dr C'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 can address that concern by suppressing details of the fact Dr C practises in XX."*

57. Counsel stated that while Dr C was unaware of any suggestion that others might be impugned or under suspicion, that concern was addressed by continuing the suppression of the fact that Dr C practises and lives in xx.

58. He added that the cases which discussed the concern of suspicion falling on others commonly involves practitioners in smaller communities or townships where the number of practitioners are few but that was not the case for xx. In any event, as a matter of prudence, it was appropriate to continue the suppression order as to xx.

59. Counsel addressed Dr C's good record and the lengthy period of time since the events in question. He submitted that publication of Dr C's name in these circumstances would be unreasonable and that the points he had made regarding penalty (above) and with regard to delays (for which he said Dr C could not be blamed) were repeated here. This, coupled with the clear evidence that he has not only practised without complaint but to a high level of professional standard in the

ensuing 25 years undermined any serious assertion that the public needed to know his name or identity.

60. Counsel referred to the character references (above) and concluded there could be no basis to suggest that rehabilitation was necessary. He further submitted there was no good reason why the thousands of patients who, since the events in question, had been treated by him or otherwise had consulted with him should be affected by publicity or otherwise or have doubts raised because of publicity about his conduct when he had been otherwise exemplary.

61. Mr Waalkens stated that, as a precautionary measure, Dr C was agreeable to the imposition of a condition on his registration that he would be required to divulge to any patient or prospective patient who may ask him or otherwise enquire of him whether he was the medical practitioner who was the subject of the disciplinary finding that he was the medical practitioner involved.

62. Counsel submitted this condition would also enable those patients or prospective patients (or indeed others) who may have an interest in knowing whether Dr C was the practitioner involved by simply searching the Medical Council's publicly available website. In this way they would learn of the condition and make the enquiry of Dr C.

63. Counsel commended this condition as an effective and responsible way in which any concerns about knowing Dr C's identity in conjunction with this matter was able to be addressed but, beyond that, publishing his name was unreasonable.

64. If a permanent suppression order were made it would not unduly restrict the media (except as to the permanent and interim suppression orders which the Tribunal has already made) from otherwise fully reporting the proceedings and the Tribunal's findings.

65. Counsel then addressed the irreparable harm which would be caused to "other persons" if Dr C's name were published.

66. The first category which he referred to was the medical practice itself and the other doctors who were principals of the practice. He stated there would be significant harm suffered by his medical practice and those who are the shareholders/principals of it. The practice "*xx*" was founded in 1966 by Dr C's father. The character references which had been provided to the Tribunal supported the assertion that the C name had become synonymous with that practice. Counsel submitted that the practice's reputation would plainly suffer the risk of irreparable harm in the event of Dr C's name being published. It is a substantial practice with a number of principals/practitioners and staff and currently has approximately 9,000 enrolled patients.

67. Mr Waalkens then referred to the further category of persons who would be harmed, that is, the patients.

68. In this regard he submitted that publication of Dr C's name also ran the significant risk of harming some of his patients who had particular vulnerabilities, such that the doctor/patient relationship may be seriously undermined. He referred to a reference from one of the principals of the practice regarding this aspect of the matter.

69. Mr Waalkens referred to Dr C's patients as being primarily long term ones who have been with him and his practice for many years. Dr C had estimated he had approximately 1,600 enrolled patients who he would regard as being his own personal ones. Of those, he estimated he had approximately 10 to 15 patients who were particularly at risk of being harmed if he were publicly identified. He provided details of two (unnamed) patients to illustrate the point.

70. Mr Waalkens then referred to Mrs C, Dr C's wife, who would be irreparably harmed if her husband's name were published. Mr Waalkens produced a letter dated 1 July 2010 from P, the Executive Principal of xx College, a girls' school in xx, where Mrs C has been a long-standing teacher. The Principal identified a significant risk of harm to Mrs C's ability to continue functioning in her professional role given the high sensitivity in the particular sector in which she works of issues to do with sexual offences and the like. There was a high risk that she would be tainted with the offending which the Tribunal had found against Dr C.

71. Mr Waalkens submitted this would be particularly unfair given the considerable lapse of time since the events in question.

72. He added that Mrs C was at risk of this category of harm which was evidence from hate mail she had received to date. In this regard he produced a typed note sent anonymously through the post which was of a particularly abusive and offensive nature.

73. Counsel also referred to the family home receiving hoax calls and that the identity of the caller (or callers) was unknown.

74. Mr Waalkens then referred to Dr C's children. He referred to the fact that the CAC did not oppose their continued name suppression although he noted there was a third child, O, who was also in the same category. All children bear their parents' surname which he referred to as being relatively uncommon.

75. Mr Waalkens then addressed the proportionality test (to which the Tribunal refers below under "Legal Principles").

76. Mr Waalkens added that the failure to suppress Dr C's name or details which might identify him would be a substantial penalty for him as well as his family and the other categories of persons to which he had referred. He submitted the effect of publication should also be considered when the Tribunal considered the other penalty orders under section 58 of the Medical Practitioners Act 1958.

Legal Principles on Penalty and Costs

77. The Tribunal has had regard to the principles of sentencing which have now been enunciated in numerous decisions of both the Tribunal and the Courts.

78. The essential principles are:

(a) Protecting the public. The principal purpose of the Act is defined in s.3 which is "*to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions*".

(b) The maintenance of professional standards. This is referred to in *Dentice v The Valuers Registration Board* [1992] 1 NZLR 720, 724-725 and in *B v Medical Council of New Zealand* [2005] 3 NZLR p.180 L.48 High Court, Elias J.

(c) Punishment of the practitioner. While the principal purpose of the Act is to protect the public and while many of the cases which come before the Courts and the Tribunal are about the maintenance (and setting) of professional standards, it is apparent from s101 of the Act that there is also the punitive element of punishing the practitioner. This can be done by a variety of means such as cancellation of registration; suspension of registration; imposition of conditions; censure; imposition of a fine; an order for costs; and publication of the practitioner's name.

(d) Rehabilitation of the practitioner. There is also the rehabilitation of the practitioner. It is a factor which the Tribunal should have regard to and take into account in addition to the abovementioned principles when analysing and considering the facts and circumstances of each particular case. When considering this principle, the Tribunal must keep in mind the need to maintain professional standards (Baragwanath J. 17 October 2006; CIV 2006-404-2186).

79. In *Professional Conduct Committee v Martin* (HC Wellington, CIV 2006-485-1461, 27 February 2007) Gendall J observed that while striking off or suspension has a punitive effect, it is not necessarily the purpose of the order:

> *"Obviously striking off or suspension has a punitive effect. However, that is not necessarily the purpose of the order. ... It is made for the primary purpose of protecting the public and community by upholding proper professional standards, deterrence (both specific and general), ensuring only those who are fit, in the wider sense, to practise are given that privilege."*

80. In *A v Professional Conduct Committee* (High Court 5 September 2008 CIV-2008-404-2927) Keane J. When considering cancellation or suspension, observed:

> *"[80] An instance of the line of demarcation between purpose and effect, in a sense is also a continuum, is it seems to me Taylor v General Medical Council [1990] 2 All ER 263, 266, HL, a decision from which I derive four points explicitly and implicitly a fifth.*
>
> *[81] First, the primary purpose of cancelling or suspending registration is to protect the public, but that 'inevitably imports some punitive element'. Secondly, to cancel is more punitive than to suspend and the choice between the two turns on what is proportionate. Thirdly, to suspend implies the conclusion that cancellation would have been disproportionate. Fourthly, suspension is most apt where there is 'some condition affecting the practitioner's fitness to practise which may or may not be amenable to cure'. Fifthly, and perhaps only implicitly, suspension ought not to be imposed simply to punish."*

His Honour then referred to rehabilitation of the practitioner:

> *"[82] Finally, the Tribunal cannot ignore the rehabilitation of the practitioner: B v B (HC Auckland, HC 4/92, 6 April 1993) Blanchard J. Moreover, as was said in Giele v The General Medical Council [2005] EWHC 2143, though '... the maintenance of public confidence ... must outweigh the interests of the individual doctor', that is not absolute – 'the existence of the public interest in not ending the career of a competent doctor will play a part'.*

Tribunal's Decision on Penalty and Costs

81. It is now 25 years since the proved conduct occurred. While the passage of time does not make right a wrong which has been done nor absolve the wrongdoer of responsibility, it is a significant factor which the Tribunal must take into account in the particular context of this case when deciding penalty.

82. There is no evidence that Dr C has behaved inappropriately before or since. Indeed, the evidence is to the contrary. Dr C has never had any other complaints made against him.

83. The Tribunal refers here to the eight references in a little more detail, which were produced to attest to his good character. They were (and some still are) persons who have worked alongside him, most for very lengthy periods of time, and have had many opportunities to observe him, in different situations whether with patients, staff, professional colleagues or generally. All attest to his high standards of

conduct and professionalism, and all described the proved conduct as being completely out of character.

84. His medical colleagues describe him as a competent and caring doctor who practises medicine with integrity and who strives to maintain the highest of standards including innovation and research. They consider the proved conduct of the charge to be entirely out of character.

85. Dr R is also a partner in Dr C's practice. He has known him since 1979 and worked closely with him since that time. He has stated that throughout the years he has known Dr C, as well as working closely with him and at times consulting with Dr C's patients he has not had any cause for concern regarding his competence or level of insight in respect of boundaries with patients. At no stage has he ever had the slightest concern about his doctor/patient relationship with any of his many patients. Dr R is the Complaints Officer for the practice having held the role for 22 years. He confirms that no patient has ever made a complaint in regard to inappropriate behaviour/boundary issues or any other concern about their relationship with Dr C and nor has he heard of any such complaints and, if there had been, he states he would have known of them.

86. He refers to the stress and toll the process has taken on Dr C which has not only affected him but has been very disruptive to the practice and will cause significant harm to many of the patients of the practice if his name is published. Dr R states this is especially so with respect to those patients who suffer from mental health problems and who require ongoing treatment and management as well as those elderly patients who are anxious and vulnerable. In Dr R's opinion those patient groups are particularly at risk of being disadvantaged or harmed by publicity if Dr C's name is not suppressed.

87. In Dr R's opinion he states there is no basis for Dr C's patients to have any lack of confidence in him to properly manage their care but he has seen first hand the "sensationalised" media reports about the matter and believes that naming Dr C would cause irreparable harm.

88. Dr Y, a partner in Dr C's practice, has confirmed she has been his colleague since 1982 throughout which time she has known him to be a competent and caring doctor who practises medicine "with integrity and righteousness of heart". She states she is aware of the disciplinary proceedings and the burden this has placed on him and the extreme strength, stoicism and resilience for him to carry on his practice. She states she is aware of the toll it has taken on his personal life and health which has been apparent to her over the years. She refers to the practice as remaining a leader in innovation, research and striving to maintain the highest standards concerning which Dr C "has played a huge part in getting the practice to where it is to date".

89. Ms S, the senior administrative member of staff (who gave evidence at the hearing) has stated that until the present matter arose, in her view, Dr C had an unblemished record over 25 years of general practice and had proved to be of impeccable character both professionally and socially.

90. Ms D, a senior practice nurse who has known Dr C for 29 years and who has worked closely with him and his patients states that she has only ever observed him conducting himself in an exemplary manner towards patients and staff members alike and has never observed any sign of him acting inappropriately or in a sexual manner towards a patient and nor has she ever heard that he has. She considers he has well-established boundaries in all respects and is a well respected and caring doctor. She too finds the proved conduct completely out of character.

91. Ms E, a practice nurse who currently works with Dr C and has known him for 9 years has always found him to be considerate, caring and thoroughly professional as an employer. She has never felt uncomfortable when in his company and has never experienced or heard of him making inappropriate comments or acting inappropriately towards other persons. In her experience he has always treated his patients with the utmost respect and shown genuine concern for them. In her view, he delivers a very high standard of care with an equally high level of professionalism.

92. Ms F, an ex-practice nurse who has known Dr C for 12 years has always found him to act in a professional caring manner showing compassion and empathy to all of his patients. She now works with him (part of his practice time) in a new role and has

never observed him acting inappropriately towards any patient or any female. She regards his behaviour towards her and his patients as entirely professional and respectful and has never felt uncomfortable in his company.

93. Ms H, a clinical trials director (who also gave evidence at the substantive hearing) has stated that she has known Dr C for 13 years. She presently works with him (part of his practice time) and states that he has always maintained clear professional boundaries with both staff and patients always using a chaperone as appropriate which she states is demonstrative of his impeccable professional standards. She has found him to be respectful and caring at all times. She has travelled with him alone on a number of occasions and on all those occasions has found his conduct completely appropriate and never felt uncomfortable in his presence. She too describes the proved conduct as out of character.

94. Dr B, a former partner in practice who has known Dr C for 30 years considers him to be a man of honesty and integrity, well-liked and trusted by his patients, medical colleagues and practice staff. She states he is a highly skilled and dedicated GP and a valued member of the medical community. She too finds the proved conduct completely inconsistent with the behaviour she has observed of him and uncharacteristic of the person who states she knows so well.

95. It appears from this evidence that Dr C continues to practise without complaint or concern.

96. The Tribunal refers to Dr Miller's report, completed during the substantive hearing but not produced until after the Tribunal's findings were made. It was made, therefore, before Dr Miller had an opportunity to know or read the Tribunal's findings and decision. Be that as it may, there is nothing in Dr Miller's report which might suggest that Dr C is a current threat to public safety or that the public needs protection from him.

97. The Tribunal, when considering the range of penalties available to it, weighed in the balance what was proportionate, having regard to protection of the public, maintenance of professional standards, punishment of Dr C and his rehabilitation.

98. Without condoning what did occur, the Tribunal does not consider that Dr C's registration should be cancelled or that he should be suspended from practice. To impose either of those penalties now, taking all matters into account, would be somewhat artificial and unnecessary.

99. However, the Tribunal was left with the impression that Dr C lacked a degree of insight. While he consistently denied that sexual intercourse had taken place (which he was entitled to do as part of his defence) he kept referring to the occasion of mutual fondling of genitalia and of the complainant's breasts (which he did admit) as *"low grade sexual contact"*. The manner in which he consistently referred to the contact as *"low grade"* left the Tribunal with a level of concern in that he considered it was of little consequence. He was reluctant to accept, even on the basis that the complainant was not his patient but the child of his patient (the complainant's mother), that this *"low grade sexual contact"* was a breach of the mother's trust in him. He eventually accepted it was, but only grudgingly after pressed for some time under cross-examination.

100. It may be that Dr C panicked and did not want to admit any wrongdoing on his part, at whatever level, lest it might adversely affect his defence but it did raise a level of concern with the Tribunal as to his insight and what level of insight he has gained over the intervening years.

101. Dr C's email correspondence in 2000/2001 with the complainant is also relevant because they bring the 1985 incidents to a more recent time. There is specific reference to these in the substantive decision which need not be repeated here but Dr C does refer in one of them, at least, to his relief that he had not harmed the complainant, *"after all"*.

102. While Dr Miller's report does not raise concerns about public safety, and makes clear Dr C does not have any mental or personality disorder, it does raise matters of personal stressors in Dr C's life.

Conditions

103. The Tribunal is firmly of the view that conditions should be placed on Dr C's practice. They are conditions which are not unduly interventionist and which the Tribunal believes will promote professional standards while also providing Dr C with a level of support he should have.

104. Dr C will need to undergo the Medical Council's Sexual Misconduct Assessment Test and, following what arises from the programme, any conditions which the Council may think it appropriate to impose. This is to be at Dr C's own cost.

105. The Tribunal is of the opinion that Dr C needs a positive association with a mentor who should be a medical practitioner appointed and approved by the Medical Council.

106. The mentor will need to be privy to the SMAT report and any conditions which the Council may impose as a result of it.

107. The purpose of the appointment of the mentor is to put in place a programme to support Dr C and the delivery of his practice. The mentor is to liaise with the Medical Council and to report to it in the manner and when the Council requires.

108. The mentoring programme and all the expenses associated with it are to be at Dr C's cost.

Censure

109. Dr C is censured to mark the Tribunal's strong disapproval of his conduct.

Fine

110. Dr C is fined $1,000 which is the maximum the Tribunal can impose (in accordance with the 1968 Medical Practitioners Act as explained above at para. 6.4.).

Costs

111. In *Cooray v Preliminary Proceedings Committee* (Wellington Registry AP 23/94, 14 September 1995), after a comprehensive review of various previous decisions, Doogue J stated:

> *"It would appear from the cases before the Court that the Council in other decisions made by it has in a general way taken 50% of total reasonable costs as a guide to a reasonable order for costs and has in individual cases where it has considered it justified gone beyond that figure".*

112. The usual practice, as a result of that decision and other relevant authorities, is to take 50% of the costs incurred as a starting point - and to either increase or decrease that proportion, having regard to the particular circumstances of the case.

113. The Tribunal's costs are contained in four schedules of costs as follows:

113.1. Schedule One – Discovery hearing – 16 November 2006 and preliminary procedures – Total $28,843.88.

113.2. Schedule Two – Stay hearing – 30 October 2008 – Total $21,205.59.

113.3. Schedule Three – Admissibility Conference call – 17 November 2009 – Total $10,529.78.

113.4. Schedule Four – Substantive hearing – 23 to 27 November 2009 – Total $56,775.53.

114. These costs do not appear to take into account the costs incurred by the Tribunal subsequent to the substantive hearing, including the penalty hearing.

115. The CAC's costs, using the same system are as follows:

115.1. CAC investigation costs – Total $14,161.53 plus Legal Assessor costs – Total $7,402.00.

115.2. First Schedule - Discovery hearing – 16 November 2006, preliminary procedures and appeals that followed – Total $60,000.00.

115.3. Second Schedule - Stay hearing – 30 October 2008 - $8,000.00.

115.4. Third Schedule - Admissibility conference call – 17 November 2009 – Total $1,000.00.

115.5. Fourth Schedule - Substantive hearing – 23 to 27 November 2009 – Total $33,851.01 plus all of the costs incurred by Thackray Forensics Limited and John Thackray – Total $6,148.99.

116. While Mr Waalkens accepted Dr C would have to make a contribution to costs he did not accept 50% was the starting point in this case. He submitted that in the cases cited by the CAC where 50% costs orders had been made, the amounts involved were substantially less than here. He stated costs were not designed to be a penalty and they ought not to have the consequence of penalty. He submitted further that the contribution to costs ordered should not be of such a quantum as to prohibit or discourage a medical practitioner from being heard.

117. Mr Waalkens submitted the base figure against which the percentage order of costs was awarded would need to be carefully considered.

118. With regard to the costs schedules received from the Tribunal dated 23 June 2010, Mr Waalkens made the following submissions:

118.1. Of the First Schedule (discovery hearing 16 November 2006), Dr C succeeded with matters related to it and ought not to contribute any portion of those costs. Further, the legal counsel District Court costs component was dealt with by the District Court when it addressed issues of costs (again, successfully by Dr C).

118.2. The Second Schedule relating to the stay hearing of 30 October 2008 is accepted to be costs to which Dr C should contribute. Mr Waalkens

submitted that although not successful in that application, Dr C raised it in good faith as there were significant issues that required determination.

118.3. The Third Schedule relating to the admissibility conference call of 17 November 2009 was a matter in respect of which Dr C succeeded and he ought not to have to contribute anything towards those costs.

118.4. As to the Fourth Schedule of costs for the substantive hearing, Dr C accepts he ought to contribute towards those costs. With the exception of the Legal Assessor's costs, Mr Waalkens sought to remind the Tribunal that on 1 September 2009 counsel for Dr C wrote (with the agreement of Mr Lange, counsel for the CAC) noting that there was no need for the appointment of a Legal Assessor but making the point that if the Tribunal wished to appoint a Legal Assessor so be it but that this ought not become a costs issue subsequently.

119. As to the costs of the CAC Mr Waalkens made the following submissions. He stated it was difficult (particularly in the short time available) to interpret all the details from the two and a bit pages of a computer "Job Transaction Report" going back to the period from 2001. He submitted:

119.1. The costs of $7,402.00 of the Legal Assessor for the CAC were clearly excessive, particularly by comparison with the Legal Assessor's costs (a different counsel) for the Tribunal hearing (and the various matters leading up to it) which were $12,000.82 (the Tribunal has no way of knowing what work the CAC's Legal Assessor undertook and does not accept therefore, that the costs were excessive.)

119.2. Many of the "legal-prosecutor" items at the bottom of page 2 (seemingly totaling $107,924.29) were very clearly for expenses related to the discovery/appeal issues which, as above, were determined in Dr C's favour. He ought not be required to contribute to those costs.

120. The Tribunal agrees with Mr Waalkens that there should be some distinction made regarding the various categories of costs.

121. It agrees with Mr Waalkens regarding the First Schedule as to discovery issues. Ms A, while agreeing that Dr C could have access to medical records during the CAC investigation, refused to make those records available for the purpose of the substantive hearing. The matter was initially the subject of a successful application by Dr C to the Tribunal. From there, it went on appeal through all the Courts ultimately reaching the Supreme Court which referred the matter back to the Tribunal. Again, the Tribunal made an order in favour of Dr C concerning which the CAC commenced a second round of appeals but was stopped by the District Court. The Tribunal agrees that Dr C should not have to contribute to the costs and expenses arising out of the First Schedule.

122. With regard to the Second Schedule relating to the stay application, the Tribunal accepts Dr C raised it in good faith. However, the Tribunal is of the view that he should contribute 50% of the costs and expenses incurred by the CAC and the Tribunal.

123. With regard to the Third Schedule regarding the conference call of 17 November 2009 relating to matters of admissibility in the exchange of witness briefs between counsel, the Tribunal agrees that Dr C was successful and that he ought not to have to contribute towards the costs arising from it.

124. With regard to the Fourth Schedule which relates to the substantive hearing, the Tribunal is of the view that Dr C should contribute 40% of the costs and expenses incurred by the CAC and Tribunal. In reaching this view, the Tribunal has had regard to the fact that the second particular of the charge was poorly framed and further, was not proved. However, the thrust of the hearing, particularly concentrated on the first particular.

125. With regard to the costs of the CAC's investigation referred to at para 115.1 above, the Tribunal is of the view that Dr C should contribute 40% of these costs excluding the costs of $7,402.00 incurred by the Legal Assessor for the CAC.

126. The Tribunal agrees that Dr C should not have to contribute to the costs of the Legal Assessor for the Tribunal (Mr John Upton QC). However, the Tribunal wishes to

make the point that it does not query Mr Upton's costs and found him to be of particular assistance to the Tribunal.

127. The Tribunal, in reaching its decision that Dr C not be required to contribute to the costs of the legal assessors, has taken into account the level of the overall award of costs to be made against Dr C.

128. However, Dr C should have to pay all the costs and expenses of Thackray Forensics Limited and John Thackray as these were specifically incurred by the CAC because Dr C challenged the authenticity of some of the emails but his challenge was wholly unsuccessful.

Legal Principles on Name Suppression

129. With regard to publication of name, the statutory regime is set out in section 95 of the Act. Section 95(1) provides:

> *(1) Every hearing of the Tribunal must be held in public unless the Tribunal orders otherwise under this section or unless section 97 applies.*

And section 95(2)(d) provides:

> *(2) If, after having regard to the interests of any person (including, without limitation, the privacy of any complainant) and to the public interest, the Tribunal is satisfied that it is **desirable** to do so, it may (on application by any of the parties or on its own initiative) make any 1 or more of the following orders* (emphasis added):
>
> ...
>
> *(d) an order prohibiting the publication of the name, or any particulars of the affairs, of any person.*

130. Section 95(1) of the Act contains a presumption that the Tribunal's hearings shall be held in public endorsing the principle of open justice. However, the Tribunal does have discretion to grant name suppression where appropriate. Section 95(2) of the Act requires the Tribunal, when considering an application to suppress the name of any person appearing before it, or to hold part of its hearing in private, to consider whether it is "desirable" to prohibit publication of the name of the applicant or hold part of the hearing in private, after considering:

130.1. The interest of any person (including the unlimited right of a complainant to privacy); and

130.2. The public interest.

131. In many previous decisions (e.g., 51/Nur06/35P, and 65/Nur06/40P) the Tribunal has evaluated the following public interest factors:

131.1. Openness and transparency of disciplinary proceeding (*M v Police* (1991) CRNZ 14; *R v Liddell* [1995] 1 NZLR 538; *Lewis v Wilson & Horton Ltd* [2003] 3 NZLR 546; *Director of Proceedings v I* [2004] NZAR 635).

131.2. Accountability of the disciplinary process (*Director of Proceedings v Nursing Council* [1999] 3 NZLR 360).

131.3. Public interest in knowing the identity of a health practitioner charged with a disciplinary offence (*Director of Proceedings v Nursing Council*, (above); *F v Medical Practitioners Disciplinary Tribunal* (Laurenson J, 5 December 2001, HC Auckland AP21-SW01).

131.4. Importance of freedom of speech and the right enshrined in section 14, New Zealand Bill of Rights Act 1990 (*R v Liddell*, (above) and *Lewis v Wilson & Horton Ltd*, (above)).

131.5. Unfairly impugning other practitioners.

132. Blanchard J's statement in *B v B* (HC Auckland (HC 4/026 April 1993 p.99) is pertinent:

> *"In the normal course where a professional person appears before a disciplinary tribunal and is found guilty of an offence, that person should expect that an order preventing publication of his or her name will not be made. That will be especially so where the offence is proved or admitted, is sufficiently serious to justify striking off or suspension from practice. But where the order is made by a disciplinary tribunal in relation to future practice of the defendant directed towards that person's rehabilitation and there is no striking off or suspension but rather, as here the practice may continue, there is much to be said for the view that publication of the*

> *defendant's name is contrary to the spirit of the decision and counterproductive. It may simply cause the damage which makes rehabilitation impossible or very much harder to achieve."*

In *T v Director of Proceedings* (Unreported High Court, Christchurch - CIV-2005-419-002244; 21 February 2006) Pankhurst J observed at para. 42:

> *"... following an adverse disciplinary finding more weighty factors are necessary before permanent name suppression will be desirable. This, I think, follows from the protective nature of the jurisdiction. Once an adverse finding has been made, the probability must be that public interest considerations will require that the name of the practitioner be published in a preponderance of cases. Thus, the statutory test of what is "desirable" is necessarily flexible. Prior to the substantive hearing of the charges the balance in terms of what is desirable may incline in favour of the private interest of the practitioner. After the hearing, by which time the evidence is out and findings have been made, what is desirable may well be different, the more so where professional misconduct has been established."*

133. In *Anderson v PCC* (Wn CIV 2008-485-1646 14 November 2008) Gendall J observed:

> *[36] Private interests will include the health interests of a practitioner, matters that may affect a family and their wellbeing, and rehabilitation. Correspondingly, interests such as protection of the public, maintenance of professional standards, both openness and "transparency" and accountability of the disciplinary process, the basic value of freedom to receive and impart information, the public interest knowing the identity of a practitioner found guilty of professional misconduct, the risk of other doctors' reputations being affected by suspicion, are all factors to be weighed on the scales.*
>
> *[37] Those factors were also referred to at some length in the Tribunal. Of course publication of a practitioner's name is often seen by the practitioner to be punitive but its purpose is to protect and advance the public interest by ensuring that it is informed of the disciplinary process and of practitioners who may be guilty of malpractice or professional misconduct. It reflects also the principles of openness of such proceedings, and freedom to receive and impart information.*

134. The Tribunal must have regard to and weigh in the balance any competing public versus privacy interests.

135. A leading case on name suppression in the medical disciplinary context is *F v Medical Practitioners Disciplinary Tribunal* (unreported, High Court Auckland Registry, AP21-SW01, 5 December 2001). Laurenson J identified interests that needed to be weighed in determining whether to grant name suppression. These can be summarised as follows:

135.1. The public interest includes the interests of any person including the members of the profession, and the practitioner being disciplined.

135.2. The purpose of disciplinary proceedings is to protect the public and the profession rather than punishment.

135.3. The Tribunal should consider the extent to which publication would protect the public or the profession.

135.4. Other than statutory requirements there is no code or set criteria and the Tribunal's discretion should not be fettered.

135.5. The issue is generally determined by considering whether the presumption of openness is outweighed by the public's or appellant's interests. This will involve considering whether the interests of the public, including the profession will be adequately protected if a suppression order is made.

135.6. Whether the balance is in favour of protecting the public by means of publication, as against the interests of the practitioner in carrying on his profession uninhibited by any adverse publicity.

136. Once a finding of professional misconduct has been made, the public interest requires that there is a presumption in favour of publication of name, and that the onus is on the defendant to satisfy the Tribunal that that presumption is displaced by private interests of the defendant.

Tribunal's Decision on Dr C's Application for Permanent Suppression Order

137. Mr Lange submitted that, in the normal course, if a charge is found proved then any interim name suppression order is discharged. While that is the general approach,

that is not what occurs in every case. As is well known, each case is fact specific and the Tribunal must weigh in the balance the public interest and the private interests of the practitioner or those others who may be affected adversely.

138. The Tribunal deliberated at length on whether to lift the interim order or to grant a permanent one. It concluded, after due care and consideration, that it was appropriate in the particular circumstances of this case that a permanent non publication order of Dr C's name or any identifying details be made.

139. The Tribunal took into account the passage of time – some 25 years – since the proved conduct occurred. While the length of time, in itself, does not absolve the wrongdoer from aberrant conduct, it is relevant in this particular case. Ms A did not make her complaint until some 16 years later. The Tribunal understands that young persons who have been in such situations often do not make their complaints until a later date. There is considerable case law on this and the Courts recognise that for a variety of reasons the delay in making the complaint is understandable, as it was in this case. However, in addition to this there was then an 8 year or so delay before the matter was the subject of a full hearing. A significant amount of that time was attributable to the various interlocutory applications which were made by the CAC and which were unsuccessful.

140. What is relevant here is that during the past 25 years there has never been, according to the evidence before the Tribunal, any complaint regarding Dr C's conduct and nor was there any complaint prior to that time.

141. At the time of the proved conduct Dr C was 32 years old. He is now 58 years old and, according to the character evidence before the Tribunal, all those who have been informed of the Tribunal's findings have found the proved conduct to be entirely out of character. Many have found it difficult to believe.

142. Almost all the character references provided to the Tribunal have spoken of Dr C's appropriate conduct around matters of a sensitive or personal or sexual nature as being entirely appropriate whether it be with medical colleagues, other health practitioners, staff or patients.

143. The Tribunal has taken into account that usually it follows that where a serious charge is proved against a health practitioner, be it a member of the medical profession or other discipline, there will necessarily follow an adverse effect on that person's family and those with whom he/she is closely associated either professionally or personally and is not, in itself, a reason to grant permanent name suppression.

144. However, in this particular case, there is evidence before the Tribunal that there could be resulting harm to Dr C's practice which involves a number of other partners who have worked hard (as he apparently has) to ensure the practice has a good name and provides a proper standard of care to the community and its patients.

145. There is evidence from Mrs C's employer that she would be undoubtedly harmed in the practice of her profession, she being an employee of another organisation, if Dr C's name were published.

146. There is also evidence that Dr C's children, all of whom bear his surname and who the Tribunal has been told is an unusual surname, would also be harmed. There has been evidence before the Tribunal of the youngest child having past and current complex health problems.

147. Then there is the rehabilitation of Dr C himself and the difficulties which would ensue for him both in his practice and personally if his name were published.

148. In his report of 26 November 2009, Dr Miller, general and forensic psychiatrist, has stated that in his opinion he has no knowledge of any matters other than the evidence from the charge before the Tribunal to suggest that Dr C presents a risk to the public. He states he is familiar with the Medical Council's policy on sexual boundaries in the doctor/patient relationship and has the strong impression that Dr C has a good appreciation of the principles which are identified in that guideline.

149. Finally, there is no evidence before the Tribunal that any other doctors would be necessarily impugned if Dr C's name were the subject of a non-publication order. If there is such evidence, then the CAC has not presented it to the Tribunal. In any event, if there were any suggestion that any other doctor might be impugned then

that doctor could readily assert, in the appropriate circumstances, that this matter does not relate to him.

150. As stated above, the Tribunal has carefully weighed in the balance the matters which must be taken into account by the Tribunal when making a decision such as this and has reached the view that the threshold has been met that it is "desirable" in all the circumstances that an order granting permanent name suppression to Dr C and any details which may identify him should be made in accordance with section 95(2) of the Act and in accordance with the principles which have been enunciated by the relevant legal authorities.

151. **Conclusion and Orders**

152. The charge in particular one has been proved (refer substantive decision MPDT 341/02/95C). Dr C shall practise his profession in accordance with the following conditions:

152.1. Dr C is to undertake the Medical Council of New Zealand's Sexual Misconduct Assessment Test (SMAT) and such conditions as the Council may impose as a result of the programme once undertaken. All costs relating to this condition are to be met by Dr C.

152.2. Dr C is to have a one-to-one relationship with a mentor. The Medical Council shall appoint a mentor who meets with its approval. The purpose of appointing a mentor is to support Dr C personally and the delivery of his practice. The mentor is to report to the Medical Council when required by the Council. All costs relating to this condition are to be met by Dr C. This condition is to continue for a period of three years.

153. Dr C is censured to mark the Tribunal's strong disapproval of his conduct.

154. Dr C is fined $1,000.

155. The Tribunal makes the following orders regarding costs an expenses incurred by the CAC and Tribunal:

155.1. With regard to the First Schedule referred to at paragraphs 113.1. and 115.2. above, Dr C is not required to make any contribution.

155.2. With regard to the Second Schedule referred to at paragraphs 113.2. and 115.3. above Dr C is ordered to pay 50%.

155.3. With regard to the Third Schedule referred to at paragraphs 113.3. and 115.4. above Dr C is not required to make any contribution.

155.4. With regard to the Fourth Schedule referred to at paragraphs 113.4. and 115.5. above Dr C is ordered to pay 40% plus all of the costs incurred by Thackray Forensics Limited and John Thackray but is not required to make any contribution towards the costs of the Legal Assessor.

155.5. With regard to the costs of the CAC's investigation referred to at para 115.1 above, Dr C is ordered to pay 40% of these costs excluding the Legal Assessor's costs of $7,402.00.

Permanent Name Suppression Orders

156. On 26 November 2002 the Tribunal made a permanent order suppressing the name and any identifying details of Ms A (217/02/95C)

157. On 26 November 2002 the Tribunal made an interim order suppressing the name of Dr C. The Tribunal also directed that nothing be published which identifies Dr C as a xx practitioner pending determination of the charge by the Tribunal (216/02/95C). That order is now made permanent.

158. During this hearing between 23 and 27 November 2009 the Tribunal made, as the hearing proceeded, a number of suppression orders as follows:

158.1. An interim order of non publication of any evidence relating to matters regarding Ms As' mental health (tscpt 38/5-20). That order is now made permanent.

158.2. Those passages of the cross-examination of Ms R (formerly W) referred to at paragraphs 106 to 109 inclusive of this decision (tscpt 73/9-20; 76/7-24). That order is to be permanent.

158.3. Paragraphs 75 to 81 of Dr C's written brief of evidence with some exceptions (tscpt 104/8-23; 116/14-34; 117/1-30). That order is permanent.

158.4. The illnesses of Dr C's children. That order is permanent.

158.5. A permanent order of non publication suppressing the name of Ms H and Mrs S (tscpt 197/3-16).

158.6. A permanent non publication order regarding the medical records of Ms A which were produced to the Tribunal at the hearing (tscpt 39/5-20).

158.7. Orders of non publication on an interim basis for the following persons, names of places, and other details which may identify either the complainant or Dr C (tscpt 4/15-34 and 5/1-33):

158.7.1. Mrs C and her occupation as a xx
158.7.2. Ms R (formerly known as Mrs W)
158.7.3. M
158.7.4. U
158.7.5. Mrs T
158.7.6. Mrs L
158.7.7. x
158.7.8. aa
158.7.9. bb
158.7.10. cc
158.7.11. dd
158.7.12. ee
158.7.13. xx
158.7.14. ff
158.7.15. gg

These interim orders are now made permanent.

159. Following completion of the draft decision the Tribunal agreed that further orders of non publication should be made on an interim basis until the further order of the Tribunal regarding the following persons, names of places, and other detail which may identify either the complainant or Dr C:

159.1. Dr W

159.2. Dr Y

159.3. All email addresses of Ms A and Dr C

159.4. The precise dates of birth of Ms A and Dr C

159.5. The reference to Ms A being the xx child in a family of xx children.

These interim orders are now made permanent and are to include the name of Dr R and G Hospital.

160. The Tribunal also agreed, following completion of the draft decision, to make an interim order of non-publication of the entire decision for a period of seven days from the date of delivery of the decision to the parties and their counsel to enable counsel to confer to ensure that all the interim and permanent suppression orders which were made either prior to or during the hearing or in this decision are appropriately reflected in this decision.

Publication of Decision

161. The Tribunal directs that an appropriately anonymised copy of this decision and a summary of it be placed on the Tribunal's website. The Tribunal further directs that a notice stating the effect of the Tribunal's decision be published in the New Zealand Medical Journal (section 138 Medical Practitioners Act 1995).

DATED at Wellington this 1st day of October 2010.

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Sandra M Moran
Chair
Medical Practitioners Disciplinary Tribunal