MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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BY COURT ORDER PUBLICATION OF THE NAME OF THE DOCTOR IS PROHIBITED PUBLICATION OF THE NAME OF THE COMPLAINANT IS PROHIBITED	**DECISION NO:**	286/02/96C
	IN THE MATTER	of the Medical Practitioners Act 1995
		-AND-
	IN THE MATTER	of a charge laid by a Complaints Assessment Committee pursuant to Section 93(1)(b) of the Act against R medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Ms P Kapua (Chair)

Mr P Budden, Dr R S J Gellatly, Professor W Gillett, Dr C P Malpass (Members)

Ms K L Davies (Hearing Officer)

Mrs H Hoffman (Stenographer)

Hearing held at Christchurch on Tuesday 28, Wednesday 29, Thursday 30 and Friday 31 October 2003 and Monday 8 and Tuesday 9 December 2003

APPEARANCES: Mr M F McClelland and Ms J Hughson for a Complaints Assessment Committee ("the CAC").

Mr A H Waalkens and Mr C W James for Dr R.

Supplementary Decision

1. In its decision 275/02/96C dated 22 March 2004 ("the substantive decision") the Tribunal found Dr R guilty of professional misconduct in the course of his management and treatment of his patient, A. This supplementary decision is the Tribunal's determination of penalty and should be read in conjunction with the substantive decision.

Submissions on behalf of the Complaints Assessment Committee ("CAC")

2. Mr McClelland, on behalf of the CAC, submitted that the findings against Dr R were serious but given that Dr R had continued to practise since the charge was first brought the CAC did not consider that suspension was appropriate.

3. However, the CAC was of the view that a condition of practice should be applied to Dr R requiring that he undergo a competence review by the Medical Council in respect of his management of cases of a similar nature. Alternatively, it was submitted that a condition could be imposed requiring that Dr R work under supervision for a fixed period.

4. The CAC also considered that censure of Dr R would be appropriate as well as a fine and that an appropriate level of costs should also be made.

Submissions for Dr R

5. In response, counsel for Dr R, Mr Waalkens, submitted that the circumstances of the case, including its complexity and the fact that it occurred within a public hospital setting contributed to the shortcomings the Tribunal found in respect of the management and care of A.

6. Mr Waalkens then set out in his submissions a number of changes that Dr R wished to highlight in respect of processes at xx Hospital. It was submitted that those systems and processes were designed to avoid a repetition of the situation that had occurred in this case.

7. In respect of the imposition of a fine, Mr Waalkens submitted that while Dr R is in a position to pay a fine it should not be a further penalty. It was also submitted that Dr R has suffered the stress of a medico-legal process lasting almost four years. Further, Mr Waalkens submitted that Dr R had apologised to A specifically in his evidence before the Tribunal.

8. Mr Waalkens noted that censure by the Tribunal is a significant penalty for Dr R.

9. Mr Waalkens does not accept that there should be any imposition of conditions on the basis that *"Mr R <u>is</u> a competent and highly respected xx"*. In support of that, Mr Waalkens referred to 34 references that were submitted during the substantive hearing in support of Dr R. Mr Waalkens further submitted that there have been no other patients that have come forward in respect of any complaints and there is, therefore, no basis for any suggestion of any imposition of conditions or requirement to work under supervision.

Decision

10. Section 110 of the Medical Practitioners Act 1995 describes the penalties available to the Tribunal where it has found a practitioner guilty of professional misconduct. Those penalties are:

(a) Suspension for a period not exceeding 12 months;
(b) A requirement to practice medicine subject to conditions for a period not exceeding 3 years;
(c) Censure;
(d) Imposition of a fine not exceeding $20,000; and
(e) Payment of part or all of the costs incurred.

11. It is accepted that a finding in and of itself is punitive to the practitioner and that in exercising the powers under the Act the Tribunal must do so primarily in order to protect the public.[1]

12. The Tribunal has made serious findings against Dr R and in doing so has come to the view that those findings related to Dr R's management and treatment of A. In reaching that finding the Tribunal was mindful of the position that existed at the time in respect of xx Hospital.

13. The Tribunal has considered the submissions made by Mr Waalkens relating to changes within the hospital system and Dr R's own practice changes that it is submitted have been undertaken in order to ensure that a repetition of the shortcomings that occurred in the management and treatment of A are not repeated. To that end, the Tribunal does not consider the imposition of conditions of practice or a competence review is appropriate in the circumstances.

14. The Tribunal therefore orders in respect of penalty that:

(a) Dr R be censured;

(b) Dr R is to pay a fine of $10,000;

(c) Dr R is to pay 40 percent of the total costs incurred in respect of the hearing, being $77,934.31; and

(d) A notice under Section 138(2) of the Act be published in the New Zealand Medical Journal;

Name Suppression

15. Prior to the hearing Dr R was granted interim name suppression and counsel were requested to address the issue of whether name suppression should continue.

16. Name suppression was granted to Dr R on the basis of (**not for publication by order of the Tribunal)**. The Tribunal took a precautionary approach in respect of this matter and granted interim name suppression, despite the emphasis in the Act on the public process.

17. Clearly the presumption in respect of the public process is intensified where a doctor has been found guilty of a disciplinary offence. It would only be in exceptional circumstances that publication would not follow a guilty finding on the basis that any potential patient is entitled to make an informed choice in respect of engaging the services of a xx.[2] Further, other practitioners in the area may well be under suspicion where name suppression continues. It is also to be noted that the 34 references submitted by Dr R indicate that there has been a level of disclosure already in respect of this matter.

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[1] Teviotdale v Preliminary Proceedings Committee of the Medical Council of New Zealand [1996] NZAR 515; Pillai v Messiter (No. 2) (1989) 16 NSWLR 197

[2] F v Medical Practitioners Disciplinary Tribunal

18. The Tribunal has not received any further information as to **(not for publication by order of the Tribunal)** and the information presented as part of the application for interim name suppression is what is relied on. As already noted the Tribunal took a precautionary approach in its interim decision but considers that the evidence presented as part of the application for interim name suppression is not supportive of an application for permanent name suppression following an adverse disciplinary finding.

19. Counsel for Dr R submitted that Dr R should be entitled to name suppression in his own right by virtue of the time that has elapsed since this particular matter was the subject of complaint. He further submitted that the matter has its genesis in 1991 which indicates some antiquity and therefore supports permanent name suppression.

20. The Tribunal does not accept those submissions and notes Mr Waalkens acceptance that an order for permanent name suppression is unusual following the upholding of a disciplinary charge. Mr Waalkens has however, requested continued interim name suppression for Dr R for a period of two weeks to allow consideration of appeal and other rights.

21. In the absence of any compelling evidence in relation to **(not for publication by order of the Tribunal)** the Tribunal is of the view that in the public interest the application for an order granting permanent name suppression Dr R should be declined and that Dr R's name should be published to avoid further conjecture and speculation particularly as it reflects on other doctors.

22. However, an order for suppression of any of the details of the matters set out in paragraphs 16, 18 and 21 above is made to ensure the privacy of the people mentioned within those paragraphs.

23. The Tribunal therefore orders that:

(a) The application for permanent name suppression of Dr R is declined;

(b) All details and references to Dr R's family, particularly in paragraphs 16, 18 and 21 of this Decision and paragraphs 5, 6, 13 and 14 of Decision No. 239/02/96C are permanently suppressed;

(c) Dr R is granted continued interim name suppression for 10 days from the date of receipt of this Decision by the parties.

(d) To avoid doubt, the Order for suppression of the complainant's name and any identifying details made in Decision No. 229/02/96C is permanent.

DATED at Auckland this 3rd day of June 2004

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P Kapua

Deputy Chair

Medical Practitioners Disciplinary Tribunal