



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 277/03/116D

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

AND

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

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Monday 1 March 2004

PRESENT: Ms P Kapua - Chair
Dr F McGrath, Dr J M McKenzie, Mr G Searancke,
Dr A D Stewart (members)

APPEARANCES: Mr M Heron for Director of Proceedings
Ms G J Fraser - Secretary
(for first part of call only)

Decision on the applications for Interim Name Suppression/Private Hearing

1. Dr K faces one charge of disgraceful conduct on the basis that it is alleged that between 1 August 1999 and 31 July 2000 he had an intimate and sexual relationship with his patient, A.
2. The Director of Proceedings has lodged the following applications pursuant to section 106(2):
 - (a) That the hearing be held in private
 - (b) Prohibiting the publication of the name and occupation of the complainant, A
 - (c) Prohibiting the publication of the name and occupation of the witness, B
 - (d) Prohibiting the publication of the name and occupation of the witness, C.
3. Mr Waalkens, on behalf of Dr K, has lodged an application for interim name suppression.
4. The basis for the applications set out in paragraph 2(a) to (c) above is that the complaint involves matters of a distressing, sensitive and intimate nature and that an order pursuant to section 107 would not go far enough to protect the complainant's privacy. The submissions filed asserted that the complainant is **(not for publication by Order of the Tribunal)** and publicity or a public hearing could impact adversely on the complainant both professionally and privately. It was also submitted that given the nature of the charge the public interest is not served by the disclosure of intimate and sensitive details.
5. The application concerning Mr C is predicated on the basis that Mr C is a xx involved in xx that relies on him retaining his anonymity.
6. In support of the application for interim name suppression for Dr K, it was submitted that the nature of the allegations carries a risk of substantial damage to Dr K's reputation and to his family. The Tribunal accepts that submission and considers that in this instance those factors outweigh any public interest considerations.
7. During the telephone conference Mr Heron responded to the email sent by Mr Waalkens advising that he would be opposed to a private hearing if it precluded Dr K's wife from

attending as his support person. Mr Heron expressed some reservation at Dr K's wife being present but suggested that counsel would attempt to resolve the matter and the Tribunal would only be required to address the matter if a resolution were not found.

8. With the exception of the reservations referred to above both parties consented to all applications.
9. The Tribunal considers that given the sensitive nature of the charge and the matters that will be discussed the hearing should be in private and all applications prohibiting publication of names and occupations should be granted as sought.
10. In respect of whether any support person is able to be present for the hearing counsel are to agree and advise the Tribunal, or in the event that they cannot agree, to make an application to the Tribunal that may be dealt with prior to or at the commencement of the hearing.

Orders

11. An order pursuant to s.106(2)(a) that the hearing will be held in private
12. An order pursuant to s.106(2)(d) prohibiting publication of the name and occupation of:
 - (a) A
 - (b) B
 - (c) C
13. An interim order pursuant to s.106(2)(d) prohibiting publication of the name of Dr K.

DATED at Auckland this 17th day of March 2004

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P Kapua

Deputy Chair

Medical Practitioners Disciplinary Tribunal