MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO: 301/04/120C

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: Miss S M Moran (Chair)

Dr L Ding, Dr A R G Humphrey, Dr A A Ruakere, Mrs H White (Members)

APPEARANCES: Ms K G Davenport for the Complaints Assessment Committee

Mr A H Waalkens for respondent

Ms G J Fraser - Secretary (for first part of call only)

Hearing held by way of telephone conference on Tuesday 7 September 2004 at 7.30pm

The Application

1. Dr R is a general medical practitioner practising in xx. On 19 April 2004 a Complaints Assessment Committee charged Dr R with disgraceful conduct pursuant to section 93(1)(b) of the Medical Practitioners Act 1995 (the Act). On 3 June 2004 Dr R applied for an interim order that pending further order by the Tribunal, to follow its decision in respect of the disciplinary charge and thereafter as the Tribunal might direct, there be an order suppressing publication of his name or any fact identifying him. Dr R's application is made pursuant to section 106(2)(d) of the Act. On 18 August 2004 the Complaints Assessment Committee filed an amended charge and provision of further particulars, details of which are set out below.

The Charge

2. The charge states that Dr R between 1985 to 2000 acted in a way that amounted to disgraceful conduct in a professional respect in that he behaved towards his patients in a manner that contravened the Medical Council's Statement of Sexual Abuse in the Doctor/Patient relationship in that:

> *"1. He abused his position as a medial practitioner and took physical and emotional advantage of his patients by engaging in inappropriate sexual relationships with women patients in his care;*
>
> ***Particulars***
>
> • *In 1997 Dr R advised Dr Z that he had had sexual relations with unnamed patients.*
>
> • *In December 1999 and subsequently Dr R advised Dr X that he had had sexual relations with two different patients namely Ms S and Ms J.*

2. Dr R failed to act appropriately when performing cervical smears and/or internal examinations on women patients by not wearing usrgical gloves and/or conducting examinations without an appropriate chaperone;

Particulars

- *In 1986 when employing Ms P as a nurse he did not use a chaperone when seeing women patients*

- *Between 1987 and 2000 when employing Dr X and Dr Z he did not use a chaperone when seeing women patients.*

- *In 1999 in the course of discussion with Dr X, Dr R said he never used gloves when conducting internal examinations.*

3. Dr R made inappropriate remarks of a sexual nature, or asked inappropriate questions that were sexually oriented, or were sexually suggestive, when consulting with patients.

Particulars

- *When seeing Ms K he asked her about details of her sex life when not related to the consultant.*

- *He asked Ms P about her "love" life when not related to the consultation.*

- *When treating Ms K he asked her to disrobe when the door was open and to bend over so that he could examine her bottom.*

Either collectively and/or individually these charges and particulars amount to disgraceful conduct in a professional respect."

Summary of Grounds for Application

3. Dr R relies on several grounds in support of his application including the following:

(a) He denies the charge.

(b) The charge is one of disgraceful conduct and correspondingly carries with it a high risk of damage to his name and reputation as a consequence of any publicity wherein he is identified.

(c) The charge is yet to be properly particularised.

(d) Any publicity of his name carries a risk of substantial damage to his reputation.

(e) Publicity of Dr R's name will also risk irreparable damage and also upset to his family.

(f) Upon the grounds set out in two affidavits of Dr R affirmed on 12 July and 1 September 2004, an affidavit of his practice partner, and a signed but unsworn affidavit of his former practice nurse.

4. The principal points in Dr R's affidavits and repeated in his counsel's submissions are::

(a) That he is actively involved in (**not for publication**). He states that it is the type of work that adverse publicity will detrimentally and irreparably affect.

(b) He works in a medical partnership with another doctor (referred to as his practice partner). They have a successful medical partnership employing a number of staff, some of whom have been employed by Dr R for many years.

(c) Dr R has no prior convictions or other adverse professional findings against him.

(d) The only other complaint in which he has been involved was recently dismissed by a different Complaints Assessment Committee.

(e) Dr R is desperately concerned about the irreparable harm that he says would be caused if his name were not suppressed pending a determination by the Tribunal of the charge he faces. He states that publicity would unquestionably adversely affect his practice partner's practice as their two practices are inter-related.

(f) Dr R has xx children, (**not for publilcation**). All his children are active in school and sporting and local community activities. He says publication of his name would be harmful to them.

(g) Dr R is also concerned about damage that may be caused to his brother who bears the same surname and who holds a position of responsibility and reasonable prominence. Dr R says that publicity of his own name would unquestionably be linked to his brother.

(h) Dr R is also concerned that publicity of his name would affect his wife who, while bearing a different surname, also has a position of responsibility in the community. Dr R states that publicity of his name would be linked to her and he believes would cause her unfair difficulty and stress.

(i) Dr R states that since the complaint was made against him in late 2001 he has been immensely stressed. He has been consulting a general practitioner for depression arising from this. He states that publicity of his name or details which would identify him would exacerbate these stressors. He has attached to his first affidavit a letter from his general practitioner dated 15 June 2004. In his report, the general practitioner has stated that he has major concerns about the possibility of publication of Dr R's name prior to the hearing as he gains much support from his work colleagues and his patients. He has stated that Dr R's continuing to work and feel valued is an important part of his self esteem. Due to certain domestic circumstances Dr R does not have the same level of support in his private life and in the general practitioner's opinion publication would seriously compromise Dr R's practice and leave him in a very vulnerable situation. He has stated that he has no doubt that Dr R's health would be seriously compromised.

5. It should be noted that Dr R's first affidavit was affirmed and filed prior to the Amended Notice of Charge being filed and served on him. The Tribunal understands that the Amended Notice is significantly more particularised than the original charge.

Application by CAC in opposition

6. On 9 July 2004 counsel for the Complaints Assessment Committee filed a Notice in Opposition to Dr R's Application for Name Suppression. The grounds upon which the CAC relies are:

(a) That it is likely that there are other patients who have had similar experiences to those complained of given the evidence received to date.

(b) It is contrary to public safety to allow Dr R name suppression.

(c) Publication of Dr R's name may reveal other similar offending.

(d) The particulars given show a pattern of repeated offending and that there is justified concern that other offending may have been committed.

(e) Dr R's opposition concerns only his own health (and some concerns for his family). Those concerns, while important to Dr R, must be weighed against strong concerns for the on-going safety of Dr R's patients.

(f) As appearing further in the affidavit of Ms Kelly (apparently Secretary to Counsel for the CAC).

7. As to this last matter, the Tribunal did not have before it an affidavit of Ms Kelly (the Tribunal understands for reasons relating to the issue of admissibility as yet to be argued between counsel) but did have before it unsigned and incomplete statements dated June 2004 of four former patients. These statements appeared to relate more particularly to the third part of the charge regarding the allegation that Dr R had made inappropriate remarks of a sexual nature or asked inappropriate questions that were sexually oriented or were sexually suggestive when consulting with patients.

8. One of the patient's statements related to remarks commencing *"in about 1998 or 1999"*.

9. Two further statements were from former sisters-in-law both of whom had been his patient for about 15 years.

10. The fourth statement was from a patient regarding a remark made at one consultation in late 1985, some 19 years ago. This particular former patient is the person whose complaint was dismissed by a different Complaints Assessment Committee (referred to at paragraph 4(d) above).

11. Also presented to the Tribunal were copies of letters from legal counsel representing the Complaints Assessment Committee to two women. The letters made certain allegations regarding Dr R, attached a copy of the charge and asked the women if they were prepared to talk to counsel about their own experiences with Dr R. The Tribunal understands that neither of those women has responded to date.

Second Affidavit of Dr R and of his practice partner in response

12. The only Notice of Charge which the Tribunal has before it is a charge entitled "Amended Charge and Provision of Further Particulars" dated 18 August 2004 (which is the charge set out at paragraph 2 above).

13. Dr R has affirmed and filed a second affidavit dated 1 September 2004 which summarises his response to the Amended Notice of Charge.

14. With regard to the first part of the charge, it asserts that he engaged in sexual relationships with women patients in his care. The charge asserts that in 1997 he advised a former practice partner of his that he had had sexual relations with unnamed patients.

15. A further particular is that in December 1999 and subsequently he advised a different former practice partner that he had had sexual relationships with two different patients who are named and identified. We refer to them as Ms S and Ms J.

16. Dr R entirely denies the allegations that he engaged in sexual relationships with women patients in his care and states it is completely untrue.

17. With regard to the two former practitioner employees, Dr R states that neither work with him any more. He states that one of them wanted to enter into a personal relationship with him and was upset when he reconciled with his wife and believes that this is the reason why she left the practice.

18. With regard to the other doctor with whom he worked, he states that she has made up these allegations.

19. With regard to the particular relating to Ms S, Dr R states that he has spoken to her and that she forwarded to him by facsimile on 10 August 2004 a copy of a letter dated 2 June 2004 sent to her by counsel for the CAC. A copy of this letter is attached to Dr R's affidavit and is written in similar terms to those letters referred to above (at paragraph 11).

20. Dr R states that he understands from Ms S that she has already spoken to the office of the Health & Disability Commissioner as well as with the convenor of the Complaints Assessment Committee denying any problems.

21. With regard to the allegation regarding Ms J, Dr R has annexed to his affidavit a copy of a letter from her to the convenor of the Complaints Assessment Committee dated 19 January 2004.

22. Ms J's letter confirms she had received a letter the month before from the convenor of the Complaints Assessment Committee and that they had had several telephone calls to discuss the Committee's queries. Her letter is couched in terms indicating that she is repeating in it what she has told the convenor by telephone. She has expressed both surprise and anger that her name has been associated with this complaint without her knowledge or consent, that she is well able to speak for herself if she needed to make a complaint, that the complaint is not supported by her, and that in her opinion it is both unfounded and malicious.

23. Also attached to Dr R's second affidavit is an affidavit of his former practice nurse of approximately 12 years (until two years ago when she retired). The affidavit is signed but not sworn as the deponent is presently unwell. The practice nurse states that she is aware of the allegations which have been made against Dr R and his application for name suppression which she supports. She states that she worked closely and directly with him including observing him during consultations with many of his patients and has not seen any hint or sign of him acting in a sexually inappropriate manner and nor, until she had heard of the complaints made in this matter, had she heard of complaints by patients or others against him. In her opinion he is a thoroughly safe doctor.

24. A further document attached to Dr R's second affidavit is dated 22 June 2001 addressed To Whom It May Concern from a Ms T. The person's name and address is stated on the document but it is not signed. It relates to enquiries made of her at that time, her view in regard to the manner of the approach, and a statement that she was not a "victim of any inappropriate behaviour by Dr R".

25. Dr R refers in his second affidavit to the second part of the amended charge which alleges that he acted inappropriately by not wearing gloves when performing internal examinations on women patients. He states he has never done that and nor has he ever told his former practice partner that he never used gloves when performing internal examinations.

26. With regard to the third part of the amended charge which alleges inappropriate questions or comments from him of patients when consulting with them, Dr R states that, as with all the other particulars of the charge, he will go into further detail at the substantive hearing but in summary he believes he has been misinterpreted. He strongly rejects the allegations that he sexualised the consultations in the way alleged.

27. Overall, he firmly rejects the suggestion that there may be many other patients of his who will be encouraged to come forward if they see publicity of his name and/or identity in conjunction with this matter. He has stated that instead, his reputation and standing have been gravely tarnished by the enquiries being made of his patients and that he would like it to stop

28. In support of his application, an affidavit has been filed by his practice partner. She has stated that the overwhelming impression she has obtained from those to whom she has spoken who have worked at the practice was that Dr X had been attracted to Dr R and had wanted to enter into some kind of personal relationship with him and was upset when this did not occur.

29. The practice partner has referred to the concern stated by the CAC that it opposes Dr R having interim name suppression because of *"strong concerns for the ongoing safety of Dr R's patients"*.

30. She has stated that within her own knowledge she is quite certain that there is no substance at all to this concern, that they frequently share patients, many of whom have been Dr R's patients and vice versa, and that no-one has ever approached her since she commenced working at the practice with any complaints that Dr R had behaved in a sexually inappropriate manner or that he has sexualised consultations by making inappropriate sexual comment.

31. She states that she and the staff at the practice are aware of the allegations that have been made in this complaint and that while they are supportive of Dr R they wish to assure the Tribunal that having been informed of the allegations they are watchful and observant of Dr R's practise. The practice partner states that she holds no concerns at all about him and nor does she have any concerns about the safety of his patients.

32. She states that publication of his name and/or identity of him in conjunction with this charge would have a dramatic effect upon the whole of the practice and would certainly detrimentally affect her practice.

33. She strongly emphasises that in her opinion there is no basis to be concerned about the safety of Dr R's patients.

34. She concludes by stating that her husband is a patient of Dr R and that he has been the only GP whom both her children have attended and who are now teenagers. She states that she has also been a patient of Dr R's and he has never acted inappropriately with respect to any of the consultations with her or her family.

Principles applicable to name suppression applications

35. When considering the principles applicable to name suppression involving medical disciplinary cases the starting point is section 106 of the Medical Practitioners Act 1995.

36. Section 106 of the Act provides:

> *"(i) Except as provided in this section and in section 107 of this Act, every hearing of the Tribunal shall be held in public.*
>
> *(ii) Where the Tribunal is satisfied that it is desirable to do so, after having regard to the interests of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make any 1 or more of the following orders:*
>
> *(a) An order that the whole or any part of a hearing shall be held in private:*

(b) An order prohibiting the publication of any report or account of any part or any hearing by the Tribunal, whether held in public or in private:

(c) An order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:

(d) *… an order prohibiting the publication of the name, or any particulars of the affairs, of any person."*

37. Section 106(1) of the Act emphasises that the hearings of the Tribunal shall be held in public unless the Tribunal, in its discretion, applies the powers conferred on it by section 106(2) of the Act.

38. A further exception to the presumption that the hearings of the Tribunal shall be heard in public is contained in section 107 of the Act which provides special protection for complainants where the charge involves a matter of a sexual nature or where the complainant gives evidence of an intimate or distressing nature.

39. While section 106(1) of the Act creates a presumption that the hearings of the Tribunal shall be held in public there is no presumption created by section 106(2) of the Act. When the Tribunal considers an application to suppress the name of any person appearing before it, the Tribunal must consider whether it is desirable to prohibit publication of the name of the applicant after taking certain matters into account. Those matters are:

(a) The interests of any person (including the right of the complainant to privacy without limitation); and

(b) The public interest.

40. With regard to the *interests of any person* these include Dr R.

41. The Tribunal may also have regard to persons other than the practitioner. In this particular case, the interests of Dr R's practice partner, his children, his brother, and his wife, have also been brought to the attention of the Tribunal as matters which it should take into account when considering Dr R's application for name suppression.

42. When considering the issue of *"public interest"* the Tribunal should have (and has had) regard to the following matters:

(a) The public interest in knowing the name of a doctor accused of a disciplinary offence;
(b) Accountability and transparency of the disciplinary process;
(c) The importance of freedom of speech and the right enshrined in s.14 New Zealand Bill of Rights Act 1999 which provides that *"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"*;
(d) The extent to which other doctors may be unfairly implicated if Dr R is not named;
(e) The possibility that publicity might lead to discovery of additional evidence;
(f) The extent to which the absence of publicity may allow an opportunity for further alleged offending.

43. In reaching its decision, the Tribunal has not only had regard to the matters raised by and on behalf of Dr R and of the Complaints Assessment Committee, but the prevailing case law including but not exclusively the more recent case of Frater J in *Director of Proceedings and "I"* (High Court Auck. Registry CIV-2003-485-2180 20 Feb. 2004).

44. Frater J confirmed that the presumption in section 106(1) of the Act in favour of public hearings made it clear that, as in proceedings before the civil and criminal courts, the starting point in any consideration of the procedure to be followed in medical disciplinary proceedings must also be the principle of open justice.

45. She referred to the observation of the Full Court in *S v Wellington District Law Society* [2001] NZAR 465 at 469 that proceedings before the Tribunal are not criminal proceedings and nor are they punitive.

46. She stated that medical disciplinary proceedings have a specific purpose, namely, to protect the health and safety of members of the public by ensuring that medical practitioners are competent to practise medicine and referred to section 3(1) of the Act and referred to the observation in *S* at page 469:

> *"It is the public interest in that sense that must be weighed against the interests of other persons, including the practitioner, when emphasising the discretion whether or not to [grant name suppression]"*

47. The learned Judge then stated that the most significant difference, in her judgment, was *in the threshold to be attained in each case before the balance is tipped in favour of name suppression. In cases before the Tribunal the criterion is whether suppression is "desirable". In the courts the word commonly used is "exceptional"*. (At para. [72]).

48. Frater J stated that the factors to be taken into account in deciding whether the threshold has been reached are universal but that the list was not complete; and that one factor not mentioned is the stage in proceedings that the application was made: that is, whether the application is made *before* or *after* final determination. She stated that it was a critical factor in that case.

49. The learned Judge referred to the case of *R v Police* (High Court P.Nth AP 8/95 9 March 1995) where Greig J stated at page 6 that the consequences of publicity for a professional or self-employed person who is subsequently acquitted or cleared of charges can be particularly acute:

> *"There are in this case important consequences of harm which will arise to the Defendant and to the family. The consequences to the Appellant were largely taken into account. They are the usual ones which have greater significance to a professional person who is self-employed, depending for his livelihood on the goodwill of the public. It is important not to give weight to such considerations before it may have the result in giving or appearing to give a favoured position to the professional accused in comparison with others. It is not the case that there is a more lenient view taken in favour of those who are educated, affluent or in possession of positions of status or importance. The fact is, however, that publicity of accusation [sic] can have an irreparable effect on a professional's career and livelihood."*

50. As Frater J commented, that is a major reason why, in both the criminal jurisdiction, and in proceedings before disciplinary tribunals, professional and self-employed people have frequently, although not invariably, been granted name suppression until the outcome of the proceedings is known. (at para [79]).

51. Frater J further referred to the case of *R v K* (T010512 District Court Chch 21 February 2001) at page 7 where Judge Noble suggested that a useful cross-check in a situation such as occurred in *Director of Proceedings v I* was for the Court (or other decision maker) to stand back, and ask itself, "would the defendant's name have been suppressed after acquittal?" She said it was sage advice and that if the answer were "yes", or even "probably" it should be in the interim as well.

52. Frater J stated at para [81]:

> *"It is important to emphasise, however, as the Judge did, that each case must be considered on its own facts. There can be no general presumption either in favour of, or against, name suppression. And that applies in all contexts. In each case the onus is on the applicant to satisfy the decision maker/s, on the balance of probabilities, that the presumption in favour of open justice should be departed from. It would be wrong to elevate a statement of reality … to a presumption in favour of granting such applications pending determination of the charge."*

53. It is not the role of this Tribunal to decide any disputed issues of fact between the parties. That is the role of the Tribunal before whom the charge will be heard on 27 September. However, the Tribunal is entitled to take into account the overall picture when evaluating the competing claims of private interest and public interest in order to make a balanced and fair decision when exercising its discretion.

Submissions of Counsel

54. Counsel for Dr R submitted that a principled approach to the case should dictate that given the imminence of the hearing, the suggestion that others might come forward if there is publicity of Dr R's name is misconceived. He stated that even if similar fact evidence of that type could be introduced (which he denied and would argue was inadmissible) he stated that there was little time for the CAC to have its evidence finalised and served on Dr R so that he had a proper opportunity to respond.

55. He stated that even if an assumption were made that there is a pattern of repeat offending and/or that there are others that will come forward when they see adverse publicity of Dr

R (which he denied) the fact was that such evidence or other information would do nothing to assist the Tribunal in dealing with the matters before it.

56. He stated that there had been no publication or publicity of Dr R's name or identity since the matters in question were said to have occurred and nor had there been any publicity since the CAC had embarked on its enquiry and charged Dr R. He stated that the matters alleged to have occurred go back many years.

57. He stated that the "evidence" being put by the CAC in support of systemic misbehaviour or a pattern of such behaviour was grossly inadequate and referred to the information provided in Dr R's affidavits and that of his practice partner.

58. He emphasised that there was insufficient evidence for the Tribunal to determine that the CAC had discharged the burden of establishing *"a pattern of repeat offending"* and/or *"a justified concern that other offending may have been committed"*; and nor was there any evidence of any real concern, least of all *"strong"* concern, *"for the ongoing safety of Dr R's patients"*.

59. Counsel for the CAC submitted that the extracts from the proposed evidence (referred to above) were from women who all individually had experienced inappropriate sexual comments from Dr R.

60. She stated that it was unlikely that Dr R's practice partner would have experienced any of the matters set out in those statements as the very nature of their consultations meant that such communications were likely to be between doctor and patient.

61. With regard to reputation, counsel for the CAC stated that it was not suggested that there should be anything other than publication of Dr R's name as an xx GP rather than any information about the partnership or practice in which he worked.

62. Counsel for the CAC laid particular emphasis on the statement in Dr R's second affidavit where he dealt with the allegations made in the statements of the women (regarding

inappropriate remarks of a sexual nature) by deposing that he had been *"misinterpreted"*. She stated he did not deny the comments were made.

63. She stated that regardless of the proximity of the hearing date, the issues raised were important.

64. She also asserted that there was strong argument that similar fact evidence could be brought to support allegations such as in the present charge.

The decision in this application

65. The Tribunal is satisfied that Dr R's reputation will be seriously damaged if his name is published at this juncture. The first part of the charge alleges that he took physical and emotional advantage of his patients by engaging in inappropriate sexual relationships with women patients in his care.

66. On the scale of offending, that category of conduct (if proved) is at the top end of the scale.

67. The Tribunal accepts that, to a more limited extent, there may well be damage to the practice of Dr R's practice partner but, by itself, that would not be sufficiently persuasive to cause the Tribunal to exercise its discretion in granting name suppression. Similarly, nor would the interests of Dr R's brother, children and wife, be sufficiently persuasive on the material presently before the Tribunal. It is accepted that when a doctor is charged members of his family will suffer, to a greater or lesser extent, a degree of stress and distress but there has to be something more than that to persuade the Tribunal to make a suppression order.

68. While the first part of the charge makes an allegation of sexual relationships, the Tribunal notes that the basis for this is what Dr R allegedly told Dr Y in 1997. No patient is named and no complainant has come forward regarding that particular.

69. With regard to the second particular under the first part of the charge the Tribunal notes that the basis for this is what Dr R allegedly told Dr X. This particular names two women.

In Dr R's second affidavit, he deposes that he has spoken to by one of the named women who wants nothing to do with the matter and has forwarded to him a copy of a letter she received from Counsel for the CAC inviting her to come forward and make comment (paras 17-20 above). The other woman who is named has forwarded a letter to the Convenor of the CAC stating that she too wants nothing to do with the matter and that the allegation is *"unfounded and malicious"* (paras. 21-22 above).

70. While the Tribunal does not, and should not, make any findings of fact in regard to the first part of the charge, the Tribunal notes that there is no individual complainant who has come forward and that those who are named, on the face of it, do not support the allegation.

71. As the Tribunal has already observed, this part of the charge is very serious and any publicity associating Dr R with it would be gravely detrimental to his professional reputation.

72. As Counsel for Dr R emphasised during his oral submissions before the Tribunal, these were unproven allegations which at their very highest were vague.

73. On the information presently before it, the Tribunal is not satisfied that it has been established that there is *"a pattern of repeat offending"* and/or *"a justified concern that other offending may have been committed"* or that the safety of other patients is at risk.

74. In the circumstances of this particular application, the Tribunal accepts the submission of Dr R's counsel that this application is in the nature of an interim one only which will be revisited by the Tribunal once it has heard all the evidence and determined whether or not the charge (or any part of it) is proved or not.

75. The Tribunal, having had regard to all of the information before it, the submissions of Counsel, and the applicable principles of law, has reached the conclusion that in the circumstances of this particular case the applicant has satisfied it, on the balance of probabilities, that there should be an interim order granting name suppression to Dr R.

Conclusion and order

76. The Tribunal hereby orders:

> Pending further order by the Tribunal to follow its decision in respect of this disciplinary charge, and thereafter as the Tribunal might direct, there be an order suppressing publication of the name of Dr R or any fact which may identify him.

DATED at Wellington this 16th day of September 2004

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S M Moran

Senior Deputy Chair

Medical Practitioners Disciplinary Tribunal