



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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**PUBLICATION OF
THE NAME OF THE
DOCTOR, WITNESSES
AND COMPLAINANT
AND ANY DETAILS
WHICH MAY IDENTIFY
THEM IS PROHIBITED**

DECISION NO: 307/04/120C

IN THE MATTER of the Medical Practitioners

Act 1995

-AND-

IN THE MATTER of a charge laid by 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: Dr D B Collins QC (Chair)

Ms J Courtney, Dr R S J Gellatly, Dr U Manu, Dr J L Virtue

(Members)

Ms G J Fraser (Secretary)

Mrs G Rogers (Stenographer)

Hearing held at Auckland on Monday 27 September through to and including Thursday 30 September 2004

APPEARANCES: Mr M Heron for Complaints Assessment Committee ("the CAC")

Mr A H Waalkens and Ms C Garvey for Dr R.

Introduction

1. In a decision delivered on 15 October 2004 the Tribunal dismissed charges laid by a CAC against Dr R. The charges were serious and alleged, inter alia, that Dr R had abused his position as a medical practitioner by engaging in inappropriate sexual relationships with patients in his care.
2. Dr R received the benefit of an order granting him interim name suppression pending determination of the charges against him. After the Tribunal issued its decision dismissing the charges Dr R filed an application for permanent name suppression. That application was supported by an affidavit and submissions from Dr R's counsel. The CAC responded by advising that it took a "neutral position" as to whether or not Dr R's name and identifying details should be suppressed on a permanent basis.

Decision

3. The Tribunal has now had an opportunity to consider Dr R's application together with his supporting affidavit and submissions and determined that his application should be granted.

Reasons for Decision

4. Dr R's counsel acknowledges that the fact charges have been dismissed is not in itself a reason for granting a doctor permanent suppression of his name and identifying features. The decision of the District Court in *Harman v MPDT* (MP 4275/00 District Court Auckland 3/5/02) is an example of a case in which charges were dismissed but name suppression declined.

5. In determining whether or not to grant Dr R's application the Tribunal has applied s106(2)(d) Medical Practitioners Act 1995 by answering the following question:

“Is it desirable to permanently suppress Dr R's name and identifying details after having regard to the

- *Public interest;*
- *Dr R's interests;*
- *The interests of other persons; and*
- *The privacy of the complainants.”*

6. In this case the issue to be resolved involves the balancing of Dr R's interests and the interests of other persons on the one hand against the public interest.
7. No submissions were received relating to the complainants' interests. The complainants' position has been subsumed into the stance taken by the CAC in this case.

Dr R's Interests

8. Dr R's personal interests can be distilled to two considerations, namely:
- The risk of harm to his reputation;
 - The risk of harm to his health.
9. The allegations against Dr R were so serious that if they had been established it is likely he would have faced the prospect of having his name removed from the register of Medical Practitioners. Dr R's reputation would have been destroyed.
10. Even though the Tribunal was obliged to dismiss the charges the Tribunal's decision records its significant concerns about Dr R. In particular the Tribunal believes Dr R has difficulty in maintaining appropriate boundaries between his personal and professional lives. There can be no doubt that publishing Dr R's name in conjunction with the Tribunal's findings will cause harm to Dr R and seriously undermine his professional reputation even though the Tribunal has dismissed the charges laid against Dr R.
11. In addition to the risk of damage to his reputation Dr R has asked the Tribunal to assess the risk of harm to his health that is likely to follow if his name is published. This aspect was

summarised in the following way by the Tribunal when granting Dr R interim name suppression:

“...since the complaint was made against [Dr R] in late 2001 he has been immensely stressed. He has been consulting a general practitioner for depression arising from this 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.... He has stated that he has no doubt that [Dr R’s] health would be seriously compromised if the Tribunal allowed publication of his name and identifying details.”

12. In his supporting memorandum Mr Waalkens QC refers to the evidence relied upon to support the granting of interim name suppression by the Tribunal and suggests:

“They identify compelling reasons for a permanent order being made. Moreover, the rationale and decision made by the Tribunal when making the order of interim suppression still remains – albeit more so now that the charge has been dismissed.”

Interests of Other Persons

13. The Tribunal is aware Dr R practises in a medical partnership with another doctor (Dr B) who gave evidence to the Tribunal. The Tribunal is satisfied that if Dr R’s name is published in association with the Tribunal’s finding there is a strong likelihood the practice as a whole will be harmed and that as a consequence Dr B and the practice staff will suffer. The Tribunal also believes that there is a risk that Dr B’s reputation may also be harmed if Dr R’s name is published. Dr B risks damage to her reputation simply by reason of her professional association with Dr R.
14. The Tribunal’s attention has also been drawn to the fact that Dr R has xx children, ... **[not for publication]**. Publication of Dr R’s name is likely to cause harm to Dr R’s children.
15. Dr R has also asked the Tribunal to take account of the fact that publication of his name is likely to cause stress and harm to his wife even though they are no longer together and she does not use his surname. The Tribunal has factored the interests of Dr R’s wife into its

decision-making process primarily because it believes the evidence about Dr R's extra marital affairs is likely to cause stress to Dr R's wife if his name is published.

Public Interest

16. There are three factors which the Tribunal has taken into account when assessing public interest considerations in this case. Those three factors are:

- Accountability and transparency of the disciplinary process;
- The importance of freedom of speech;
- The need to avoid unfairly impugning other doctors.

Accountability and Transparency of the Disciplinary Process

17. A major criticism of the disciplinary regime under the Medical Practitioners Act 1968 was that disciplinary hearings were not heard in public and that the identity of doctors who appeared before the disciplinary bodies was often suppressed. This led to claims that the disciplinary process was neither transparent nor accountable.

18. It is apparent from an examination of the Hansard records concerning the introduction of the Medical Practitioners Act 1995 that those who promoted the legislation wanted the present disciplinary process to be transparent and accountable. (See for example *Hon. J Shipley New Zealand Parliamentary Debates Vol. 554, p 5065*).

19. The Tribunal fully recognises there is considerable interest in maintaining accountability and transparency in the disciplinary process and that this factor weighs heavily against Dr R's application.

The Importance of Freedom of Speech and the Right Enshrined in s14 of the New Zealand Bill of Rights Act 1990

20. The public interest in preserving the freedom of speech and the ability of the media "as surrogates of the public" to report the Tribunal proceedings has been emphasised on numerous occasions by the Tribunal and Appellate courts (see for example, *R v Liddell* [1995] 1 NZLR 538 and *Lewis v Wilson & Horton Limited* [2000] 3 NZLR 546).

21. The Tribunal has had media reports referred to it. The fact that there has been media interest in this case suggests that the importance of freedom of speech and s14 New Zealand Bill of Rights Act 1990 is a factor which weighs against preventing publication of Dr R's name.

Unfairly Impugning Other Doctors

22. A further factor in the public interest is the concern that other medical practitioners may be unfairly impugned if Dr R's name is permanently suppressed. This point has been emphasised on numerous occasions in criminal courts where judges have declined name suppression to avoid suspicion falling on other members of the public.
23. The Tribunal is concerned to avoid the fundamental unfairness caused to other medical practitioners if they are impugned. This is a difficult factor to address, particularly in light of the fact that publicity has already been given which clearly identifies Dr R as being a general practitioner in xx.

Conclusions

24. Ultimately, the Tribunal has unanimously resolved that Dr R's application should be granted. The Tribunal believes Dr R's reputation and his health should not be jeopardised where serious charges that were laid against him were not proven. The Tribunal is particularly concerned that its orders will not address its concern that other doctors may be unfairly impugned as a result of Dr R being granted permanent name suppression. Ultimately however the Tribunal believes that its overall responsibilities necessitate it not unfairly and unreasonably inflicting damage to Dr R's reputation and his health in the circumstances of this case.

DATED at Wellington this 1st day of December 2004

.....

D B Collins QC

Chair

Medical Practitioners Disciplinary Tribunal