



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 293/04/121C

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

AND

IN THE MATTER of disciplinary proceedings against
NAYAN PRASANNA
KARUNASEKERA former medical
practitioner of Greymouth

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on Thursday 24 June 2004

PRESENT: Ms P J Kapua - Chair
Mr P Budden, Dr R J Fenwicke, Associate Professor Dame Norma
Restieaux, Dr A D Stewart (members)

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

COUNSEL: Ms K P McDonald QC for Complaints Assessment Committee
Ms J Gibson for respondent

DECISION ON APPLICATION FOR NAME SUPPRESSION

The Application

1. Dr Karunasekera has made an application for interim name suppression and suppression of identifying details on the following grounds:
 - (a) Publication of Dr Karunasekera's name will severely and adversely affect his wife and two children, because of the unusual nature of his name;
 - (b) Dr Karunasekera's wife has suffered considerable stress as a result of her husband's actions and the processes associated with them;
 - (c) Dr Karunasekera is currently not registered to practise in New Zealand; and
 - (d) Dr Karunasekera is in the process of completing a STOP programme and will be compromised in his ability to present his best defence if interim name suppression and suppression of identifying details is not granted.

The Charge

2. Dr Karunasekera has had temporary registration since his arrival from Sri Lanka in February 2002. Dr Karunasekera has been charged with having conducted himself in a way that reflects adversely on his fitness to practise medicine as he pleaded guilty to and was convicted in the Invercargill District Court of three charges of indecent assault.

Submissions on behalf of Dr Karunasekera

3. In her written submissions Ms Gibson emphasised that granting interim name suppression did not mean the hearing was not in public. She rightly pointed out that there is no application before the Tribunal to hold the hearing in private. Ms Gibson also relied on the decision of the High Court in *Director of Proceedings v I* (HC Akld CIV-2003-385-2180, 20/2/04 Frater J) as to a lower threshold of assessing the “desirability” of name suppression in Tribunal hearings and that stress on Dr Karunasekera’s wife is a factor to be taken into account. Further Ms Gibson submitted that the fact that Dr Karunasekera is not registered with the Medical Council is a factor that weighs in favour of granting interim name suppression.

4. Two affidavits were filed in support of the application. The first from Dr Karunasekera emphasised that his desire for name suppression related not to himself but to his family, his wife and two children (**not for publication by order of Tribunal**). The second affidavit by Dr Karunasekera’s wife endorsed those concerns, although with an acknowledgment that the children were probably too young to understand what was happening. The main concern for Dr Karunasekera’s wife is that she too is a medical practitioner who is currently in a position to apply for full registration. She feels that the unusual name they share may affect her future career. She does state however that she has attempted to change back to her maiden name but that has been difficult as colleagues and patients know her under her married name.

Submissions for Complaints Assessment Committee

5. While Ms McDonald and Ms Hughson in their written submissions do not formally oppose the application they do not consent to the orders being made. Counsel referred to the presumption in section 106(1) of the Act that charges should proceed in public which inevitably means the practitioner’s name will be published. It was submitted that any departure from that presumption should only occur if the Tribunal considers that the interests of Dr Karunasekera outweigh the public interest served by open and public disciplinary proceedings. Further counsel raised a concern that granting interim name suppression may harm the public’s confidence in and respect for the medical profession. It was also submitted

that Dr Karunasekera's name is already a matter of public record as his name was not suppressed in the criminal proceedings.

Decision

6. The Tribunal accepts that section 106(1) requiring every hearing to be held in public (with some exceptions) is a presumption aimed at open and public disciplinary proceedings. To depart from that presumption would require the practitioner to provide robust evidence of matters that would require that departure. Dr Karunasekera acknowledges that his application is to protect his wife and possibly his children. The Tribunal acknowledges that unfortunately disciplinary proceedings cause stress to the family of the doctor and that stress is a factor to be weighed up. Based on the evidence there is some doubt as to the effect on Dr Karunasekera's children given their ages. Dr Karunasekera's wife has intimated her willingness to contemplate reverting to her maiden name and the Tribunal considers that if there were some adverse association, despite the nature of the offending, then that willingness may mitigate against any harm to her future career. Bearing in mind that Dr Karunasekera did not have name suppression for the criminal proceedings there is no compelling evidence that warrants a departure from the presumption that disciplinary proceedings should be open and transparent.

7. Accordingly, the Tribunal by a majority, declines the application for interim name suppression. One member of the Tribunal expressed reservations as he felt there was very little information about the nature of the offending and whether that would adversely affect Dr Karunasekera's wife.

DATED at Auckland this 30th day of July 2004

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P J Kapua

Deputy Chair

Medical Practitioners Disciplinary Tribunal