



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO.: 297/04/123D

IN THE MATTER of the MEDICAL
PRACTITIONERS ACT 1995

AND

IN THE MATTER of disciplinary proceedings against
JOHN ANGUS MARKS medical
practitioner of Gisborne

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

Application was considered by the Tribunal on the papers alone.

TRIBUNAL: Miss S M Moran - Chair
Dr I D S Civil, Dr M Honeyman, Dr B D King, Mrs H White
(members)

COUNSEL : Ms T Baker, Director of Proceedings
Mr C J Hodson QC for respondent

Decision on the application for name suppression

The Application

1. The Director of Proceedings, Ms Theodora Baker, made application on 27 July 2004 for an order pursuant to Section 106(2)(d) of the Medical Practitioners Act 1995 for an order suppressing the name of the patient the late Master A and his parents, the complainants, Mr A and Mrs A, and any information that might lead to their identification upon the grounds that:
 - (a) the complainants would be caused stress by the publication of their names;
 - (b) the Coroner had previously ordered suppression of their names;
 - (c) no public interest is served by the publication of the patient's name or that of the complainants.

The Charge

2. On 22 June 2004 notice was given to Dr Marks that the Director of Proceedings has reason to believe that a ground exists entitling the Tribunal to exercise its powers against him and charges that in the course of his management of the late Master A between 11 August 1999 and 16 October 1999, being a registered Medical Practitioner, he acted in such a way that amounted to professional misconduct. Particulars are provided in the notice.

Submissions and Affidavit in support of Application

3. Mr A has filed an affidavit in support of the application referring to the history of Master A's illness and subsequent death and the distress which this has caused his family. Mr A has deposed that during the course of the hearing, they expect that there will be evidence about Master A's illness and his personal life and that they do not want his name published in association with such information for his sake and out of respect for his memory. They are also concerned for the sake of their two living children and their four grandchildren all of whom bear the A name. They are concerned that publication of Master A's name would add to their family's distress. Mr A has further deposed that there was a Coroner's enquiry concerning Master A's death and their names were not published in the media at that time.

4. Mr Jason Tamm, Legal Counsel for the Director of Proceedings, has filed a memorandum in support of the application setting out the legal principles and touching on the evidence deposed by Mr A.

Submissions on behalf of Dr Marks

5. Mr Christopher Hodson QC is representing Dr Marks. He filed with the Secretary of the Tribunal a letter dated 30 July 2004 confirming that he had received from the Director of Proceedings the relevant papers. He has stated that in the light of the Coroner having suppressed the family surname it was, in his view, appropriate for the Tribunal to do likewise.

Decision

6. Section 106(2)(d) of the Act provides that where the Tribunal is satisfied it is desirable to do so, after having regard to the interest of any person (including (without limitation) the privacy of the complainants (if any)) and to the public interest it may make an order prohibiting the publication of the name, or any particulars of the affairs, of any person.
7. The Tribunal, having considered the application, the contents of the affidavit filed by Mr A, the Memorandum of Mr Tamm and the letter from Mr Hodson, is satisfied that the application should be granted.
8. Accordingly, the Tribunal hereby **ORDERS** :

That publication of the name, occupation and other identifying details of the late **Master A** and of his parents, **Mr A** and **Mrs A** be prohibited.

DATED at Wellington this 1st day of September 2004

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Sandra Moran
Senior Deputy Chair
Medical Practitioners Disciplinary Tribunal