

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 33  
5583207

BETWEEN LYNDA MARIE EMMERSON  
Applicant

A N D THE NORTHLAND  
DISTRICT HEALTH BOARD  
Respondent

Member of Authority: T G Tetitaha  
Representatives: S Henderson, Counsel for Applicant  
D Grindle, Counsel for Respondent  
Investigation Meeting: 26 January 2016 at Whangarei  
Submissions Received: 26 January 2016 from both parties  
Date of Determination: 29 January 2016

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**INTERIM DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] A reporter from Fairfax seeks the opportunity to sit in on this hearing at the beginning and end. We are currently in day two of a seven day hearing.

[2] Both parties have raised some concerns about this application. I set down time today to hear the application and granted a non-publication order yesterday suppressing all evidence in this proceeding until today. I understand the reporter has been advised by the Registry she may attend today's hearing to make submissions about non-publication. There was no appearance.

[3] Ms Emmerson does not seek a non-publication order. She submits that this is a matter of open justice. No application has been made by either party to keep this

private previously and any order I make can be subject to protecting non-party individuals and witnesses and patients by anonymising their names.

[4] The Northland District Health Board (NDHB) seeks suppression of all evidence until my determination has been delivered. It has concerns that there will be reporting of some of the allegations involved here may result in a loss of trust and confidence by the public in the provision of health services in this area. Although the Medical Council of New Zealand are investigating the more serious allegations, it has concerns the media may focus upon these salacious details. Resolution of the allegations is not part of my role and outside of the scope of my determination. The reporting may result in a loss of public confidence in the health system.

[5] There is no objection to the reporter attending the proceeding, however, suppression orders are sought up and until the release of the determination.

[6] Clause 10 of Schedule 2 of the Employment Relations Act 2000 (the Act) allows me to make an order that all or any part of evidence given or pleadings filed or the name of any party or witness or other person not be published. In exercising this discretion, an applicant must show that the interests of justice warrant the making of an order.<sup>1</sup> Relevant factors include the impact upon third parties such as patients whose care may be the part of the context in which the grievance arises.<sup>2</sup>

[7] The persons most affected by publication are those persons who are not witnesses in this hearing. These are patients and persons against whom the more serious allegations are made. In my view, it is in the interests of justice to protect them from identification by a non-publication order that anonymises their names and in respect of patients I intend suppressing all evidence leading to their identification including in particular details of their care.

[8] Restricting access to the file appears appropriate until the determination is released. Any searching of the file may reveal the names of the individuals who are the subject of the complaints and/or the details pertaining to patients.

[9] Whilst I accept that there may be a loss of public confidence if the non-suppressed evidence in this proceeding is published in advance, it is a low risk. In my view the public are capable of making a balanced decision about evidence it may read

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<sup>1</sup> *H v A* [2014] NZEmpC 92 at [79].

<sup>2</sup> See above n1 at [80].

in newspapers or view on other media. The public interest outweighs the necessity for an extensive non-publication order sought.

[10] Accordingly, the following orders are made:

- (a) The member of the media is entitled to attend this proceeding;
- (b) An interim order is made suppressing the names of non-party individuals referred to in evidence, including any witnesses and patients. Their names shall be anonymised by the use of initials;
- (c) A permanent non-publication order suppressing any evidence leading to the identification of any patients of the Northland District Health Board is made;
- (d) Any request to access the file may be granted only with the leave of an Authority Member.

[11] Costs are reserved.

**T G Tetitaha**  
**Member of the Employment Relations Authority**