

HPDT NO: 1031/Med19/434P

UNDER The Health Practitioners Competence Assurance Act 2003 (“the HPCA Act”)

IN THE MATTER of a disciplinary charge laid against a health practitioner under Part 4 of the Act.

BETWEEN **A PROFESSIONAL CONDUCT COMMITTEE** appointed by the **MEDICAL COUNCIL OF NEW ZEALAND**

Applicant

AND **DR SAMUEL JOHN SIMPSON WILSON** of Nelson, registered medical practitioner

Practitioner

HEARING held at Auckland on 29 May 2019

TRIBUNAL: Mr D M Carden (Chair)
Dr J Kimber, Dr I Civil CNZM, Dr P Thompson and Ms A Kinzett (Members)
Ms K Davies (Executive Officer)

APPEARANCES: Ms H Goodhew for the Professional Conduct Committee

Ms H Stuart for the practitioner

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Introduction and Charge

- [1] On 24 May 2018 Dr Wilson was convicted in the District Court at Nelson on eight charges of making an intimate visual recording. He was later sentenced to seven months home detention (which was upheld on appeal in the High Court). The charges concerned the use by Dr Wilson of a covert syntec USB camera disguised as a door opener and attached to his car keys.
- [2] He used this video recording device at times in the bathroom area within his own property and at times in the female staff changing room where he worked. One charge referred to his holding the camera while seated next to a female colleague such that he could film her exposed legs and up her skirt.
- [3] These convictions were inquired into by a Professional Conduct Committee (PCC) appointed by the Medical Council of New Zealand (MCNZ). The PCC laid a Charge before the Tribunal under section 100(1)(b) and/or (c) of the Health Practitioners Competence Assurance Act 2003 (the HPCA Act) alleging that those convictions either separately or cumulatively:
- a) have brought or were likely to bring discredit to the medical profession and/or
 - b) reflected adversely on Dr Wilson's fitness to practise as a medical practitioner.
- [4] The Charge was heard by the Tribunal and both parties were represented by counsel. The full text of the Charge is transcribed in the Schedule to this decision. Submissions were made on behalf of the PCC concerning Dr Wilson's liability under the Charge. Among other documents, there was produced to the Tribunal by agreement of the parties the NZ Police Summary of Facts as presented to the District Court, the District Court Judge's Sentencing Notes dated 24 May 2018, the High Court Judgment dated 18 July 2018 dismissing his appeal as to name suppression, and a Certified Copy or Extract of the Permanent Court Record referring to the convictions and penalty of the Court. These were relied on by the PCC which did not call witnesses.
- [5] Also produced to the Tribunal were various reports and references concerning Dr Wilson and the copy of an affidavit from him affirmed 23 May 2018 which had been in support of his application to the District Court for discharge without conviction and permanent suppression of his name.

- [6] Dr Wilson accepted the Charge brought against him and that the convictions and the conduct giving rise to them have brought or were likely to bring discredit to the medical profession and reflected adversely on his fitness to practise medicine.
- [7] The first task for the Tribunal is to satisfy itself that the Charge as brought has been made out, taking into account, but not being bound by, the acknowledgment by Dr Wilson that it was.

The convictions and sentence

- [8] The District Court Sentencing Notes and High Court Judgment record that at the time Dr Wilson was a 44 year old health professional employed at Nelson hospital between June 2012 and April 2015. There were 12 victims, two of whom were known to him as visitors to his home, and the other 10 in a professional capacity who worked at the same hospital. One of the colleagues had previously been a patient of Dr Wilson's.
- [9] The USB camera in question was capable of recording video footage and was disguised as a door opener attached to his car keys. This device was placed in the bathroom area of Dr Wilson's property positioned to record persons using the toilet and saving the images onto a micro SD card. Two different positions in the toilet area were used to record from different angles. The visitors to Dr Wilson's family home were filmed entering the bathroom and using the toilet including showing removal of clothing.
- [10] At the workplace Dr Wilson placed the covert camera in the female changing room and on another occasion inside a female toilet in that room. Various females using the facilities were filmed. On the final occasion Dr Wilson held the small camera in his hand while sitting next to a female colleague, yet another victim, and he filmed her exposed legs, manipulating the camera to record up her skirt in between her legs while continuing a conversation with her.
- [11] The District Court judge said that this behaviour caused the victims psychological issues such as anxiety, stress, and the inability to trust others. Some had undertaken counselling as a result. The victims had felt an element of dehumanisation and disgust which were ongoing. The District Court declined an application for discharge without conviction and an order for permanent

name suppression for Dr Wilson. The latter decision was affirmed by the High Court on appeal.

- [12] In its submissions the PCC referred to the principles involved in charges under both sub-sub-sections 100(1)(b) and (c) of the HPCA Act. They referred to the two elements of a charge under sub-sub-section (c), whether the practitioner had been convicted of a specified offence, and whether this reflected adversely on the practitioner's fitness to practise. Other decisions of the Tribunal were referred to as to the application of principles. It was emphasised that the public has a legitimate expectation that medical practitioners will behave in a morally and ethically acceptable way. There was, it was submitted, a gross breach of trust involved in recording females in his own home (especially considering their role there) and colleagues at his workplace; with both groups being entitled to feel safe in such intimate situations and Dr Wilson having violated their privacy in a most basic way. The Charge having also been laid under sub-sub-section (b), it was further submitted that there was professional misconduct under that sub-sub-section and the gravity of offending warranted imposing disciplinary sanction.
- [13] The practitioner had no submissions and called no evidence in response and it was accepted on his behalf that the principles relied on by the PCC applied. It was accepted on behalf of Dr Wilson that his convictions and conduct giving rise to them brought or were likely to bring discredit to the medical profession and reflected adversely on his fitness to practise medicine. He accepted that adverse findings would "*inevitably be made.*"

The Charge - discussion

- [14] The Tribunal accepts the submissions for the PCC. In a charge laid under section 100(1)(c) of the HPCA Act there must first be a qualifying conviction of the practitioner of an offence and the convictions are listed in subsection 100(2). These include conviction for an offence punishable by imprisonment for a term of 3 months or longer. In this case the charges against Dr Wilson carried maximum penalties of 3 years. They therefore qualify as offences under section 100(2) of the HPCA Act.
- [15] There is evidence before the Tribunal of conviction of Dr Wilson on those eight charges in the Court. Accordingly the first matter is established. Secondly is a

consideration of whether these convictions reflect adversely on Dr Wilson's fitness to practise as a medical practitioner.

- [16] The Tribunal has no hesitation in finding that ground made out. The facts of the offending as summarised above and in the District and High Courts Judgments clearly indicate the significant severity of this offending and its consequences on the victims concerned. The offending occurred over a period of some 2 years and 3 months. The victims of that offending were significantly traumatised when they learned of it and some victim impact statements were read to the District Court. The offending occurred first in the personal and trusting circumstances of Dr Wilson's home involving females visiting his home; and secondly in the professional atmosphere of his workplace involving colleagues with whom he needed to work professionally and who needed to have trust in him.
- [17] The behaviour on Dr Wilson's part has clearly brought discredit to the medical profession and warrants disciplinary sanction. The Charge, insofar as it is brought under section 100(1)(b) of the HPCA Act is therefore made out.
- [18] The convictions to which the Charge refers are qualifying convictions for disciplinary process under section 100(2) of the HPCA Act and they and the background of circumstances to them reflect adversely on Dr Wilson's fitness to practise as a doctor. The public need to be protected when health professional services are given to them and a medical practitioner must behave in a way that the public have confidence in him or her and will be protected from any adverse consequences. In this case Dr Wilson's behaviour has breached trust and caused trauma to his victims and this reflects adversely on his professionalism and his ability to give the public confidence and protection. He has lost the confidence of the public that they are safe with him and it is clearly established that there is a need for protection of the public in respect of his practise of his profession as a doctor.
- [19] The Charge is brought under both limbs of the HPCA Act referred to and the Tribunal finds it made out under sections 100(1)(b) as acts or conduct which brought discredit to the medical profession and 100(1)(c) as convictions which reflected adversely on Dr Wilson's fitness to practise.

Penalty – the PCC submissions

- [20] The submissions for the PCC referred to the general principles applicable and certain relevant cases. Some of these are referred to below
- [21] The PCC referred to aggravating features as including the nature and duration of the conduct and the level of premeditation; the gross breach of trust; and the clear breach of professional standards. It accepted that in mitigation there were features of admission of wrongdoing, admission of liability in the current proceedings and the doctor's personal circumstances as contained in the references and copy of the affidavit in the bundle.
- [22] The PCC submitted that the only way to achieve the objectives of protecting the public and maintaining professional standards was by orders of censure and cancellation of registration. It referred to the violation of the privacy of 12 women over a period of at least 2 years. The locations for the offending were places where, it was said, the women should have been entitled to a greater degree of privacy and to have been safe from conduct of this nature.
- [23] Although reference was made to the comments by the Sentencing Judge regarding attempts by Dr Wilson to protect his own privacy interests in the devices seized, the Tribunal does not treat as an aggravating factor the steps taken by Dr Wilson in the court litigation – as was his right. Emphasis was placed on the fact that Dr Wilson had manufactured the intimate visual recordings himself while in each of the cases referred to below that had not been the case.
- [24] Emphasis was also placed on the fact that Dr Wilson continues to deny any sexual element in the recordings which had been rejected by the court and was not supported by the psychiatric report that had been provided to the court and was in the bundle. It was accepted that the actions may have been driven by stress and a level of depression.
- [25] The PCC sought that there was an order for cancellation of registration and that, if Dr Wilson later applied for re-registration in the future there should be certain conditions imposed. These are referred to below in the context of conditions ordered by the Tribunal.
- [26] Finally it was sought that, if the Tribunal did not order cancellation of registration, there should be conditions imposed on Dr Wilson's return to practice of the kind referred to; and also that "*any censure and/or conditions*

imposed ... are entered alongside Dr Wilson's registration profile on the [MCNZ] website". As to the latter, no jurisdiction for the Tribunal to order this was mentioned by counsel in response to questions and the Tribunal does not consider that it has jurisdiction to direct the MCNZ as to what it might or might not enter on its website.

Penalty – the practitioner's submissions

- [27] In comprehensive submissions on behalf of the practitioner, counsel submitted that the purposes of the HPCA Act are met by orders for censure, suspension for a period of 3 months (taking into account the period of time that Dr Wilson has been out of practice since the convictions), conditions, and a contribution towards costs of 10%.
- [28] Background detail concerning Dr Wilson was provided and it was submitted he had been a promising cardiologist providing an important service to his local community. Reference was made to the 7 months home detention sentence served and the 6 months of post-detention conditions which would not expire until end June 2019; and that Dr Wilson's name had been published extensively. These factors have all had a "*powerful salutary effect.*"
- [29] Dr Wilson had undergone considerable assessment and treatment to address the issues which were major contributing factors to his offending. He had demonstrated a clear willingness and ability to rehabilitate. Dr Wilson is fit and ready to return to work, it was said, and cancellation of his registration would be out of proportion and unnecessary to meet the purposes of the HPCA Act.
- [30] Extensive documentation concerning Dr Wilson was produced to the Tribunal being first documents which had been submitted to the Court at the time of sentencing (including the copy of an affidavit by Dr Wilson himself in support of a discharge without conviction and permanent name suppression). Secondly there were produced further up-to-date documents concerning Dr Wilson written for the purposes of the hearing by the Tribunal. The Tribunal has taken these extensively into account.
- [31] These documents included a report from Dr Amanda King, consultant psychiatrist, dated 21 May 2015 addressed to the court and another from her dated 8 July 2015 addressed to the MCNZ. There was the pre-sentence report to the court and further psychiatric report dated 19 May 2018 from Dr Justin

Barry-Walsh, consultant forensic psychiatrist. There were four references produced which had been produced to the Court all dated May 2018. One from a consultant cardiologist who had worked with Dr Wilson referred to his offending having been “*spontaneously resolved well prior to detection*”. Another referred to Dr Wilson’s skills, communication, behaviour and decision-making which she described as “*exemplary*”. Others spoke highly of him.

- [32] There was a further report from Dr King, psychiatrist, dated 23 May 2018 (the purport of which is unclear) which outlined her background consultation with Dr Wilson including the then latest review on 4 April 2018 referring to various stressors and issues for Dr Wilson; but also that he had been fully co-operative and engaged with her. She expressed her concern that Dr Wilson’s anxiety would increase around the time of his trial and other issues for him. A further report from Dr King addressed to the Tribunal and dated 7 May 2019 referred to Dr Wilson as an “*an intelligent, caring and principled man who is keen to do what he can to make amends for his offending and to move on in a positive way with his life*” being well engaged with her services and “*extremely appreciative*” of interventions.
- [33] The copy of the affidavit Dr Wilson provided to the Court gave background detail and matters relevant to the consequences of convictions for him and his family.
- [34] Emphasis was placed on a comment in the report from Dr Barry-Walsh including: “*The use of sexualised behaviour to regulate mood in the commission of sexual offending does occur and this partial explanation [referring to what Dr Wilson had said concerning his actions as seeming in some way to alleviate his depressive systems] is plausible. More generally when people are depressed their evaluation of their circumstances becomes distorted and they are prone to errors in social judgment. These factors may to some extent explain Dr Wilson’s action at the time of the alleged offending and therefore provide mitigation*”.
- [35] The Tribunal also notes that Dr Barry-Walsh said that it was possible after sentencing by the court that with further psychological work Dr Wilson may achieve a better understanding of what led to the alleged offending.
- [36] The letters written for the hearing before the Tribunal:¹

¹ Documents 7,8 and 9.

- a) Refer to Dr Wilson's willingness to be open and honest about his behaviour, thoughts and feelings;
- b) Express the view of a registered comprehensive nurse in a mental health team that Dr Wilson does not pose any further risk.
- c) Express the view of a registered nurse that a decision to cancel Dr Wilson's registration would be a detriment to the medical profession and population of New Zealand and in particular cardiology.
- d) Express the view of the local Member of Parliament referring to the effect of the offending in the community and expressing the hope that Dr Wilson return to medical practice and alluding, perhaps wrongly, to what he thought the outcome should be before the Tribunal.

[37] The submissions for Dr Wilson also included:

- a) That the filming that occurred at his workplace was in the staff bathroom and did not involve patients.
- b) That Dr Wilson did not view the images over the entire 2 year period; and the Tribunal notes Dr Barry-Walsh's assessment from his interview that the offending occurred over "*a relatively brief and discrete period in late 2012 to early 2013*"; but also notes that the District Court judge did not accept that Dr Wilson viewed the images once only.
- c) That, while Dr Wilson did not gain any sexual gratification from viewing the images he now accepted there likely was a sexual component to his behaviour. The Tribunal notes that when the District Court judge referred to Dr Wilson's claim that there was not a sexual element to his behaviour, the judge noted the only explanation that Dr Barry-Walsh could give for Dr Wilson's behaviour was that sexualised behaviour may sometimes be used to regulate mood in those who are depressed.
- d) That Dr Wilson's mental health has plummeted since having been charged in the courts and he had resigned from work shortly thereafter, giving a voluntary undertaking to the MCNZ not to practise medicine.
- e) That Dr Wilson deeply regrets the harm caused to the victims and is utterly ashamed of what he has done.
- f) References to extracts from the reports and attesting to feelings of remorse and concern with letters of apology to each victim and an offer to take part

in a restorative justice process and pay emotional harm reparation (although those letters were not produced to the Tribunal).

- g) Referring to the current psychiatric care that Dr Wilson has been receiving and the changed circumstances in his family life.
- h) Emphasis from the extracts from referees and experts to stress and mental health issues in acute cardiology.
- i) That Dr Wilson's name has been published widely in connection with his conduct and the public has access to information about him and is free to make their own decision on consultation.
- j) That an additional penalty is certainly not required to deter Dr Wilson for the future.
- k) That Dr Wilson has undergone 4 years of treatment to address his health issues and is willing to undertake re-educative steps.
- l) That a least restrictive outcome approach would require that there be no order for cancellation of registration.

[38] Having reviewed various authorities it was accepted on behalf of Dr Wilson that the Tribunal would ordinarily impose a period of suspension for this type of conduct; but emphasis was made that he had already been out of practice for 4 years.

[39] It was pressed that there be an order for censure with conditions imposed on resumption of practice (and these are discussed below) and the conclusion was that there was commended a 3-month suspension, censure, conditions on practice and a 10% contribution towards costs.

Penalty – discussion

[40] The available penalties for the Tribunal are:²

- a) That registration be cancelled.
- b) That registration be suspended for a period not exceeding 3 years.
- c) That the health practitioner be required, after commencing practice following the date of the order, for a period not exceeding 3 years, to practise his or her profession only in accordance with any conditions as to employment, supervision, or otherwise specified.

² Section 101 of the HPCA Act.

- d) Censure.
- e) A fine of up to \$30,000.00 (but not if he or she has been convicted of a relevant offence or damages have been awarded against him or her – which is the case here).
- f) Costs.

[41] The principles behind penalty orders of the Tribunal as clearly set out on the basis of authorities³ are:

- a) What penalty most appropriately protects the public.
- b) The important role of setting professional standards.
- c) A punitive function (although this is not the principal purpose behind the order but may be a secondary consequence. This topic is discussed further below).
- d) Rehabilitation of the health professional.
- e) That any penalty imposed is comparable to other penalties imposed upon health professionals in similar circumstances.
- f) Assessing the health practitioner's behaviour against the spectrum of sentencing options that are available and trying to ensure that the maximum penalties are reserved for the worst offenders.
- g) An endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances.
- h) Whether the penalty proposed is fair, reasonable and proportionate in the circumstances presented.

[42] In *A v Professional Conduct Committee*⁴ the High Court said that four points could be expressly and a fifth by implication from the authorities namely:

“First, the primary purpose of cancelling or suspending registration is to protect the public, but that ‘inevitably imports some punitive element’. Secondly, to cancel is more punitive than to suspend and the choice between the two turns on what is proportionate. Thirdly, to suspend implies the conclusion that cancellation would have been disproportionate. Fourthly, suspension is most apt where there is ‘some condition affecting the practitioner’s fitness to practise which

³ *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44] – [51]; *Katamat v PCC* [2012] NZHC 1633 at [49]; *Joseph v PCC*; [2013] NZHC 1131 at [65] – [66]; *Singh v Director of Proceedings*, [2014] NZHC 2848 (esp. at [56] – [60] and [66]).

⁴ *A v Professional Conduct Committee* (HC, Auckland, CIV 2008-404-2927. 5 September 2008 at [81]).

may or may not be amenable to cure'. Fifthly, and perhaps only implicitly, suspension ought not to be imposed simply to punish."

[43] The Court went on:⁵

"Finally, the Tribunal cannot ignore the rehabilitation of the practitioner: B v B (HC Auckland, HC 4/92, 6 April 1993) Blanchard J. Moreover, as was said in Giele v The General Medical Council [2005] EWHC 2143, though '... the maintenance of public confidence ... must outweigh the interests of the individual doctor', that is not absolute – 'the existence of the public interest in not ending the career of a competent doctor will play a part.'"

[44] The Tribunal is also mindful of the remarks of Randerson J in *Patel v Dentists Disciplinary Tribunal*⁶. That case involved an appeal by a dentist whose name had been removed from the register by the Dentists Disciplinary Tribunal in relation to charges arising from his treatment of an elderly couple for whom he carried out crown and bridge work, accepted by the Court as being "*grossly incompetent and completely unacceptable*"⁷.

[45] In discussing the purpose of disciplinary proceedings the Court said:

"[28] The Dentist Act does not provide any guidance on this subject but I am satisfied that the following statement of principle by Eichelbaum CJ in Dentice v Valuers Registration Board [1992] 1 NZLR 720, 724-725 is apposite in this case:

Although, in respect of different professions, the nature of the unprofessional or incompetent conduct which will attract disciplinary charges is variously described, there is a common thread of scope and purpose. Such provisions exist to enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practise the profession in question; to protect both the public and the profession itself against persons unfit to practise; and to enable the professional calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them; see, generally, Re A Medical Practitioner [1959] NZLR 784 at pp 800, 802, 805 and 814. In New Zealand, such provisions exist in respect of medical practitioners, barristers and solicitors, dentists, architects, pharmacists,

⁵ At [82].

⁶ HC Auckland, AP77/02, 8 October 2002.

⁷ At [32].

real estate agents and a number of other professionals and callings, as well as valuers; ...

[29] *In the light of those general purposes, it is also relevant to consider the purpose of the removal of a practitioner's name from a professional register. There is authority for the proposition that removal from a professional register has a protective purpose and is not designed to punish the professional concerned: Re A Medical Practitioner [1995] 2 QBR 154, 164. Plainly, removal from the register does serve to protect the public but it also serves the function identified in Dentice of maintaining professional standards and maintaining public confidence in the standing of the profession. It also acts as a deterrent to the individual concerned and others in the profession.*

[30] *The consequences of removal from a professional register are ordinarily severe and the task of the Tribunal is to balance the nature and gravity of the offences and their bearing on the dentist's fitness to practise against the need for removal and its consequences to the individual: Dad v General Dental Council at 1543. As the Privy Council further observed:*

“Such consequences can properly be regarded as inevitable where the nature or gravity of the offence indicates that a dentist is unfit to practise, that rehabilitation is unlikely and that he must be suspended or have his name be erased from the register. In cases of that kind greater weight must be given to the public interest and to the need to maintain public confidence in the profession than to the consequences of the imposition of the penalty to the individual.”

[31] *I respectfully adopt the observations of the Privy Council and would add that it is incumbent on the Tribunal to consider carefully the alternatives available to it short of removal and to explain why the lesser options have not been adopted in the circumstances of the case. As well, while absolute consistency is something of a pipe dream, and cases are necessarily fact dependent, some regard must be had to maintaining reasonable consistency with other cases. That is necessary to maintain the credibility of the Tribunal as well as the confidence of the profession and the public at large.”*

[46] The Tribunal accepts the submission for the PCC that protection of the public, the maintenance of professional standards and maintaining the integrity of the profession are purposes of the Tribunal's disciplinary powers.⁸ The HPCA Act

⁸ *Young v Professional Conduct Committee* (H C Wellington, CIV 2006-485-1002, 1 June 2007); *Singh v Director of Proceedings* [2014] NZHC 2848.

expressly prohibits the imposition of a fine in the event that there has been conviction for an offence, as is the case here.⁹ It is not the primary purpose or function of the Tribunal to punish a practitioner as such but that may be the consequential effect of an order made; and there are questions of deterrence always to be considered.

[47] Each case must be considered on its own facts but some help can be obtained from other Tribunal decisions and there is the need for a measure of consistency.

[48] Various cases were raised by submissions on behalf of the parties and some are considered now:

Raju.¹⁰ This was a case of a nurse inappropriately accessing or viewing electronic records of patients or colleagues over a 12 month period, she having no legitimate reason for accessing these. She attempted to blame others. The Tribunal decision was that it would have suspended her for 4 months but for various reasons that the suspension could be treated as having already been served; and she was censured with conditions imposed should she recommence practice. She was ordered to contribute the sum of \$26,400.00 towards costs. For Dr Wilson it was submitted that this case involved a breach of patient privacy, not present in the current case.

S.¹¹ This was a case also of a nurse accessing electronic clinical records over a period of 5 years when she had no legitimate reason to do so and inappropriately using the information she obtained. She was censured and suspended for 5 months with conditions on any return by her to practice. She was ordered to contribute sums totalling \$20,000.00 towards costs. The submission on behalf of Dr Wilson was also made that in *S*'s case there was invasion of patient privacy. Counsel's submissions did, however, accept that the present case was more serious than those of *Raju* or *S*.

Joseph.¹² This doctor was convicted on six charges of possession of objectionable material including videos depicting children of young age engaged in sexual acts. He was censured and suspended for 12 months with conditions imposed upon resumption of practice. He was ordered to contribute

⁹ Section 101(2).

¹⁰ 712/Nur14/302 P

¹¹ 623/Nur13/256 P

¹² 506/Med12/228 P

the sum of \$12,173.00 towards costs. An appeal against that decision was dismissed by the High Court.

*Dunkley*¹³. This doctor was convicted on six charges of possession of objectionable material including sexual abuse images of pre-pubescent girls. He was sentenced in court to 160 hours community work and 18 months supervision. Taking into account the 5 months the doctor had voluntarily stopped practising, the Tribunal censured him and imposed a further 4 months suspension with conditions on his return to practice. He was ordered to contribute the sum of \$6,000.00 towards costs.

Derecourt.¹⁴ This was a case of a nurse with possession of two objectionable video recordings involving children in compromising sexual acts and footage involving sexual conduct with animals. His registration was cancelled but with a recommendation (the only resource then available) that he not reapply for registration for 6 months from the date of the decision. Conditions were imposed should he ever apply for re-registration. He was ordered to contribute the sum of \$2,390.00 towards costs. For Dr Wilson it was submitted that the charge involved “*highly abusive footage of children as young as six engaged in sexual acts, and footage involving sexual conduct with animals*” which was “*very serious and [would] not assist the Tribunal in the present case.*”

Lockett.¹⁵ This nurse was convicted of 17 charges of possessing objectionable material and making on his computer 7 objectionable still image files depicting pre-pubescent females posing in sexual ways with other objectionable material. His registration was cancelled and he was censured. He was ordered to contribute sums totalling \$1,700.00 towards costs. The submissions for Dr Wilson emphasised that this nurse had made images of this type available to others through file sharing, a significantly distinguishable factor from the present case.

Dr Y.¹⁶ This was a case of a doctor in possession of 290,000 objectionable images of girls in explicit sexual poses who had been sentenced in court to home detention for 4 months subject to conditions. The Tribunal ordered a suspension

¹³ 368/Med11/175P.

¹⁴ 14/Nur05/06P.

¹⁵ 246/Nur09/118 P.

¹⁶ 321/Med10/149P.

for 9 months (taking into account the period of 10 months already out of practice), censure and conditions on any resumption of practice. He was ordered to contribute the sum of \$6,000.00 towards costs. Reference was made to the fact that in the *Dr Y* case he had the benefit of name suppression, not available to Dr Wilson in the present case. It was submitted for Dr Wilson that a significant distinction was that the images did not involve children or abuse of children and it was said that Dr Wilson “*never intended any harm*” to his victims. This seems, however, to ignore the significant stress, humiliation and embarrassment that those victims suffered on learning of the offending.

[49] The Tribunal considers the cases of *Raju* and *S* are distinguishable because in those cases the nurses were accessing records of other patients without their knowledge whereas in this case there has been direct personal and intimate contact with the women in question. The four cases of *Joseph*, *Derecourt*, *Lockett* and *Dunkley* are also distinguishable, they being cases where objectionable material was viewed by the practitioner and there was no direct contact with the persons in question. Of importance from those cases, however, is that the viewing of objectionable material by those practitioners in the way they did only serves to promote the exploitation of victims by those making the offensive video recordings and material in question. It is noteworthy that, of the six cases referred to by the PCC only two, *Derecourt* and *Lockett*, resulted in a cancellation of registration. The others did, or could have, resulted in a period of suspension.

[50] The Tribunal thought long and hard about making an order for cancellation of registration. Taking those cases into account and having weighed all the facts and submissions of the parties, however, the Tribunal has concluded that this is not a case where such cancellation is necessary for protection of the public or maintenance of standards, provided the other orders that the Tribunal intends are made and are kept.

[51] In making that decision the Tribunal has taken into account also the aggravating features emphasised by the PCC. Reference was made to the two years between June 2012 and August 2014 as the duration of the conduct, but, as noted above, it seems that it may have been a significantly shorter period than this. The Tribunal accepts that there was premeditation as opposed to opportunistic filming aggravated by the two angles used to film persons at Dr Wilson’s home.

There was, as submitted, a gross breach of the trust that the victims placed in Dr Wilson in the use of his facilities. The fact that there was a breach of professional standards is not an aggravating feature as such and is taken into account in finding the Charge made out.

[52] There are the mitigating features considered by the PCC: admission of wrong doing; personal circumstances, including the character references; and that Dr Wilson has never been the subject of any complaint, adverse finding or subject to disciplinary matters.

[53] Account is taken of the comments made by the sentencing District Court judge regarding the lack of insight on Dr Wilson's part. The fact that Dr Wilson continues to deny there is a sexual element in the recordings, at odds with the psychiatric report provided and the District Court judge's assessment, indicates the significant need for that to be addressed but does not mean that an order for cancellation should be made.

[54] The Tribunal has considered the psychiatric and other reports and references carefully and is of the view that cancellation of registration would be disproportionate and would result in a loss to the community of a medical practitioner who is well trained and has no clinical issues. Dr Barry-Walsh had the impression, "*bolstered by the history from those treating Dr Wilson*", that there were not limitations in Dr Wilson's level of remorse. He noted that Dr Wilson did articulate a high level of distress and remorse for his actions with apparent distress at the incongruity between his identity as a healer and helper and the harm he caused. Dr Barry-Walsh made further comments about the symptoms of depression and anxiety with concomitant suicidal ideation on Dr Wilson's part.

[55] It is the Tribunal's assessment that what is needed is not cancellation of registration but rather appropriate orders for health supervision to treat Dr Wilson's behaviour and so prevent any repeat. This can best be achieved by first an order for further suspension.

[56] Normally in the circumstances of a case such as this the Tribunal would have considered an appropriate period of suspension to be some 2.5 years. The Tribunal, however, also takes into account the period of time since Dr Wilson's offending and conviction that he has not been in practice and makes allowance

for this; and that has allowed reflection and any steps towards rehabilitation that that time has allowed Dr Wilson.

- [57] The conclusion is that the period of suspension should be reduced to **one year** and that is ordered below, to run from the time that decision was announced to the hearing on 28 May 2019. That period of suspension will allow Dr Wilson then to undertake the Sexual Misconduct Assessment Test (SMAT) referred to in the conditions and to reflect further on his offending, the significant impact that this had had on the victims, the messages sent to him by the District and High Courts, and this decision. It will also allow him to complete any course of conduct as recommended by the Professional Standards Team of the MCNZ referred to below.
- [58] There should also be an order for censure. This is not a formality but a significant expression by the Tribunal of the breach of standards that has occurred and the failure on Dr Wilson's part to protect the public. That order for censure is made below.
- [59] There should also be conditions to apply after Dr Wilson resumes practice following the date of this order, which will be at least not until the period of suspension has elapsed, and these can only apply after commencement of that practice under section 101(1)(c) of the HPCA Act. Conditions were sought by the PCC and resisted to a degree on behalf of the practitioner but they form the basis for the orders that the Tribunal makes.
- [60] First Dr Wilson is to advise the Professional Standards Team of this decision, the convictions entered, and any background detail, including all health and medical mental health information, which is sought by the Professional Standards Team or the Health Committee of the MCNZ. On Dr Wilson's behalf it was submitted that that condition is not necessary but the Tribunal is of the view that there needs to be the express direction that requires compliance.
- [61] Secondly, Dr Wilson is to satisfy the MCNZ to its satisfaction that he has undertaken, at his own cost, a Sexual Misconduct Assessment Test which has been arranged in conjunction with the Professional Standards Team of the MCNZ, with appropriate compliance with the Test and the evaluation of outcomes assessed by the Professional Standards Team to ensure that any outstanding issues have been addressed by way of further treatment or conditions. This may include a recommendation for oversight by the Health

Committee of the MCNZ. It is important that the outcome of that Test be that matters which gave rise to Dr Wilson's conduct in this case are addressed and have been effectively dealt with.

- [62] Thirdly, for a period of three years after commencing practice Dr Wilson is to comply at his own cost with all directions, recommendations and requirements of the Professional Standards Team of the MCNZ including its requirements for proof of compliance. Again it was argued on Dr Wilson's behalf that such a condition is not necessary, but again, it is the Tribunal's view that there needs to be the express requirement for compliance.
- [63] Fourthly, for a period of three years after re-commencement of practice Dr Wilson is to advise future employers of the Tribunal's decision and its orders. This is to ensure compliance with notification of this important matter.
- [64] Fifthly, not sought by the PCC but regarded by the Tribunal as necessary is that for the period of three years after the commencement of practice Dr Wilson retain his relationship with his mental health adviser. The Tribunal cannot direct further what this may involve but records that it requires Dr Wilson to do this and expresses the sincere desire that the relationship between Dr Wilson and his mental health adviser will continue to provide Dr Wilson with the help that he needs. To a degree, compliance with this will depend on, and may result in, further directions, recommendations or requirements from the MCNZ Professional Standards Team under the second condition referred to.
- [65] The purpose of these conditions is so that during the period of suspension and for the period of three years after Dr Wilson re-commences practice, there will be close surveillance of his health issues and provision for these. Dr Wilson can take advice from his mental health adviser and needs to do so and he needs to consult with, and comply with the directions, recommendations and requirements of both the Health Committee and the Professional Standards Team of the MCNZ.

Costs

- [66] The PCC sought an order for costs against Dr Wilson and, having seen a Declaration of his Financial Means produced to the hearing, submitted that an appropriate rate would be 20%. It estimated its costs at \$6,700.00 exclusive of

GST. The costs for the Tribunal were estimated to be \$14,609.41. This gives a total of some \$21,309.00.

- [67] The submissions for Dr Wilson effectively accepted that an order for contribution to costs should be made. A Declaration of his Financial Means was produced and the Tribunal has taken the detail into account. There are two vehicles and a modest bank account owned by Dr Wilson and his wife and they have credit card liability. Dr Wilson said that he had been unemployed since April 2015 and is the primary caregiver for his three children, he not earning income. On the figures given, there is little from Dr Wilson's wife's income after payment of their out-goings, although it is noted that Mrs Wilson needs to travel to Wellington from Nelson each week for work and the outgoings included flights and taxi fares.
- [68] Submissions pressed for the consideration of Dr Wilson's cooperation throughout the proceeding and his agreement for presentation of the facts to the Tribunal (although in fact the documents on which the PCC relied were matters of public record rather than agreed facts). The submissions included an irrelevant reference to indemnity for costs.

Discussion

- [69] Section 101(f) of the HPCA Act reads:

... [T]he Tribunal may:

(f) order that the health practitioner pay part or all of the costs and expenses of and incidental to any or all of the following:

- (i) ...:
- (ii) any inquiry made by a professional conduct committee in relation to the subject matter of the charge:
- (iii) the prosecution of the charge by ... a professional conduct committee, ...:
- (iv) the hearing by the Tribunal.

- [70] In considering what order for contribution to costs the Tribunal should make, it must consider carefully on the one hand the means that the practitioner has (and this has been helpfully provided by the Declaration of Financial Means from him) and on the other hand the fact that, to the extent that Dr Wilson does not contribute to the cost of this Charge and the order of the Tribunal and the process involved, this must be borne by the profession as a whole.

- [71] The normal starting point for an order for contribution is 50%. That takes into account on the one hand that the profession must itself fund the disciplinary process to maintain its standards; but also on the other hand that it is not expected that the profession should fund the whole of the cost of prosecution and a reasonable contribution to this should be made by the practitioner.
- [72] Having taken the submissions of both parties into account and the means and resources for Dr Wilson as presented in his Declaration of Financial Means (which was not subject to any cross-examination), the Tribunal concludes that an appropriate contribution to costs by Dr Wilson is 20% of the approximate total, that is the sum of \$4,200.00. That is ordered below.

Result and orders

- [73] The Charge as brought against Dr Wilson is found to be made out.
- [74] Dr Wilson is censured for the criminal convictions entered against him and the underlying facts behind those convictions.
- [75] Dr Wilson is suspended for the period to 28 May 2020.
- [76] Dr Wilson may practise his profession as a medical practitioner after commencing practice following the date of this order for a period of 3 years on the following conditions:
- a) Dr Wilson is to advise the Professional Standards Team of this decision, the convictions entered, and any background detail, including all health and medical mental health information, that is sought by the Professional Standards Team or the Health Committee of the MCNZ.
 - b) Dr Wilson is to satisfy the MCNZ to its satisfaction that he has undertaken, at his own cost, a Sexual Misconduct Assessment Test which has been arranged in conjunction with the Professional Standards Team of the MCNZ, with appropriate compliance with the Test and the evaluation of outcomes assessed by the Professional Standards Team to ensure that any outstanding issues have been addressed by way of further treatment or conditions. This may include a recommendation for oversight by the Health Committee of the MCNZ.
 - c) Dr Wilson is to comply at his own cost with all directions, recommendations and requirements of the Professional Standards Team or Health Committee of the MCNZ including requirements for proof of compliance.

- d) Dr Wilson is to advise future employers of the Tribunal's decision and its orders.
 - e) Dr Wilson is to retain his relationship with his mental health adviser. The Tribunal expresses the sincere desire that the relationship between Dr Wilson and his mental health advisor will continue to provide Dr Wilson with the help that he needs.
- [77] Dr Wilson is ordered to pay the sum of \$4,200.00 towards the costs of the PCC and the hearing of the Tribunal.
- [78] The Tribunal confirms the order for permanent non-publication of the name and any identifying particulars of the victims of the offending for which he was convicted. It also orders prohibition of the publication of details of the status of the female visitors to Dr Wilson's home.
- [79] Pursuant to section 157 of the HPCA Act the Tribunal directs the Executive Officer:
- a) To publish this decision, and a summary, on the Tribunal's website;
 - b) To request the MCNZ to publish either a summary of, or a reference to, the Tribunal's decision in its next available publication to members, in either case including a reference to the Tribunal's website so as to enable interested parties to access the decision.

DATED at Auckland this 24th day of July 2019



.....
David M Carden
Chairperson
Health Practitioners Disciplinary Tribunal

SCHEDULE

Pursuant to section 81(2) of the Act the Committee charges Dr Samuel John Simpson Wilson that:

1. On 24 May 2018, Dr Samuel John Simpson Wilson was convicted and sentenced in the Nelson District Court, having pleaded guilty to eight charges of making an intimate visual recording pursuant to s 216H of the Crimes Act 1961, being an offence punishable by a term of imprisonment not exceeding three years, namely:
 - a. between 1 June 2012 and 14 August 2014, at Nelson, Dr Wilson intentionally made an intimate visual recording of another person [SB] using the toilet (CRN 15042000860);
 - b. between 1 June 2012 and 14 August 2014, at Nelson, Dr Wilson intentionally made an intimate visual recording of an unknown female using the toilet (CRN 15042000861);
 - c. between 1 June 2012 and 4 October 2014, at Nelson, Dr Wilson intentionally made an intimate visual recording of another person [number 0013] (CRN 15042001146);
 - d. between 1 June 2012 and 4 October 2014, at Nelson, Dr Wilson intentionally made an intimate visual recording of another person [number 0016] (CRN 15042001147);
 - e. between 1 June 2012 and 4 October 2014, at Nelson, Dr Wilson intentionally made an intimate visual recording of another person [number 0017] (CRN 15042001148);
 - f. between 1 June 2012 and 4 October 2014, at Nelson, Dr Wilson intentionally made an intimate visual recording of another person [number 0025] (CRN 14042001149);

- g. between 1 June 2012 and 4 October 2014, at Nelson, Dr Wilson intentionally made an intimate visual recording of another person [number 0028] (CRN 14042001150); and
 - h. between 1 June 2012 and 4 October 2014, at Nelson, Dr Wilson intentionally made an intimate visual recording of another person [number 0030] (CRN 14042001151).
2. The convictions particularised above either separately or cumulatively:
- a. have brought or are likely to bring discredit to the medical profession pursuant to s 100(1)(b) of the Act; and
 - b. reflect adversely on Dr Wilson's fitness to practise as a medical practitioner pursuant to s 100(1)(c) of the Act.

The Committee, pursuant to ss 81(21 and 91) of the Act, charges that the conduct of Dr Wilson as particularised above, either separately or cumulatively amounts to professional misconduct pursuant to s 100(b) and/or 100(c) of the Act.