NEW ZEALAND HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL

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BEFORE THE HEALTH PRACTITIONERS' DISCIPLINARY TRIBUNAL

HPDT NO	**1226/Med21/520P**
UNDER	the Health Practitioners Competence Assurance Act 2003 ("the 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 pursuant to section 71 of the Health Practitioners Assurance Act 2003. **Applicant**
AND	**DR KUL VANT SINGH** of Auckland, registered medical practitioner. **Practitioner**

HEARING held at Auckland on 28 January 2022 via AVL.

TRIBUNAL	Maria Dew QC (Chair) Ms S Baddeley, Dr K Eggleton, Dr L Chapman, Dr B Howcroft Ms Gay Fraser (Executive Officer)
APPEARANCES	Ms P K Feltham for the Professional Conduct Committee Ms H C Stuart for the Practitioner

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DECISION OF THE TRIBUNAL

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Introduction

[1] On 30 August 2019, Dr Kul Vant Singh ("the practitioner") was convicted in the Manakau District Court of one charge of sexual violation by unlawful sexual connection under sections 128 and 128B of the Crimes Act 1961.

[2] On 10 October 2019, the practitioner was sentenced to two years' and ten months' imprisonment.

[3] On 15 October 2020, the Court of Appeal dismissed the practitioner's appeal against his conviction and his application for permanent name suppression. On 24 February 2021, the Supreme Court declined the practitioner's application for leave to appeal against his conviction.

[4] On 17 June 2021, the Professional Conduct Committee ("PCC") appointed by the Medical Council of New Zealand, laid a disciplinary charge against the practitioner under s100 of the Health Practitioners Competence Assurance Act 2003 ("the Act").

The Charge

[5] The Charge sets out two aspects of alleged professional misconduct.

(a) **Conviction for sexual violation by unlawful sexual connection**.
Particulars 1 and 2 of the Charge, allege that the practitioner's conviction, being a conviction for offences under ss 128 and 128B of the Crimes Act 1961,[1] an offence punishable by a term of imprisonment not exceeding 20 years, amounts to professional misconduct in that it:

(i) Has brought or is likely to bring discredit to the medical profession pursuant to section 100(1)(b) of the Act; and/or

(ii) Reflects adversely on the practitioner's fitness to practise as a medical practitioner pursuant to section 100(c) of the Act.

(b) **Retrospective amendments to clinical notes.**
Particulars 3 and 4 of the Charge allege that on 21 January 2018, the practitioner amended the clinical notes of a consultation with a patient, Ms [ ] ("RT") on 15 December 2017:

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[1] Sections 128 and 128B of the Crimes Act 1961 "Sexual violation by unlawful sexual connection".

(i) as a result of a complaint being made by RT to the Health and Disability Commissioner ("HDC") concerning the same consultation; and/or

(ii) for the purposes of responding to the HDC's investigation

and this, either separately or cumulatively, with the first part of the charge, amounts to professional misconduct in that it has brought, or is likely to bring, discredit to the profession, pursuant to section 100(1)(b) of the Act.

[6] The hearing of the disciplinary charge before this Tribunal, proceeded based on an Agreed Statement of Facts dated 30 September 2021 and an Agreed Bundle of Documents.

[7] The parties did not call any witnesses and no sworn oral evidence was given to the Tribunal. However, the practitioner did attend the hearing and both written and oral submissions were made to the Tribunal by both parties' counsel.

[8] The hearing took place via Audio Visual Link. A recording was kept of the hearing, but no transcript is produced.

Background Facts

[9] The summary of facts below, is taken from the Agreed Summary of Facts presented to the Tribunal.

[10] The practitioner graduated with an MS BS in 1987 from the University of the South Pacific, Fiji. In 2006, he became a fellow of the Royal New Zealand College of General Practitioners.

[11] In 2017, the practitioner was employed in a General Practitioner (GP) liaison position for Counties Manukau District Health Board. The practitioner was also working as a GP at Eastside Family Doctors, 98 Ti Rakau Drive, Pakuranga, Auckland (the **Practice**). This is a medical practice, which the practitioner has owned since 2003.

Complaints to the Health and Disability Commissioner and Police

[12] On 27 December 2017, RT made and complaint to Police regarding the practitioner's treatment of her during a medical consultation on 15 December 2017.

[13] The practitioner was subsequently charged by Police and following a jury trial in 2019, was found guilty of one charge of sexual violation by unlawful sexual connection. On 10 October 2019, the practitioner was sentenced to two years' and ten months' imprisonment.

[14] The sentencing notes of Clark DCJ give details of the offending and the practitioner's defence as follows:

> "[1] The type of unlawful sexual connection that the jury found proved was the introduction of your finger or fingers into the victim's genitalia...
>
> … [8] On 15 December 2017, when she was called into your office to see you, her evidence was that she was told to go on to the bed and that you told her to remove her pants and underwear. There was very little conversation between the two of you as to what you intended to do. The victim talked about lying on the bed, that she was covered with a blanket and was also given a pillow to hold. This meant that she could not really see what was happening. She did, however, feel that you were rubbing on her vagina and touching her on the inside lips of her vagina. That was the nature of the evidence that she gave. She also talked about being moved around on the bed by you to some extent. She was not lying in the usual position which might be at the top of the bed, but instead had been moved down to the foot of the bed by you physically. The impression that I got from her evidence was that this was a slightly unusual set of circumstances…
>
> … [11] Your defence to the allegation at trial was that there was absolutely no physical contact with the victim's genitalia. This was not a situation where there was very little difference between the victim's account of things and your account of things, the two accounts were quite at odds. Your position was that this was a visual examination only and that there was no physical touching of her genitalia at all."

[15] The practitioner denies the offending. However, he acknowledges that, pursuant to s 47 of the Evidence Act 2006, the conviction for sexual violation by unlawful sexual connection is conclusive proof that he committed the offence.

[16] The practitioner accepts that the sentencing notes of Judge Clark provide evidence of the facts relating to the conviction, consistent with s 139(1)(b) of the Evidence Act 2006.

Retrospective amendments to clinical notes

[17] On 15 December 2017, the practitioner made brief clinical notes of his consultation with RT, on the day of the sexual violation. The practitioner also made further clinical notes of the consultation on 14 January 2018. It is unclear what prompted these additional notes.

[18] On 21 January 2018, the practitioner received written notice of RT's complaint to the Health and Disability Commissioner, by way of letter from the HDC.

[19] On 21 January 2018, the practitioner made further modifications and additions to the clinical notes of the consultation with RT on 15 December 2017, including:

(a) Modifying "concerned about vaginal discharge" to "*very* concerned about vaginal discharge";

(b) Adding "discussed with H/O about results and symptoms";

(c) Adding "asked about the discharge and explained about the swab results done few days earlier and showed the results on the system";

(d) Modifying "nil abdominal pain or fever had unsuccessful penetration two weeks ago had last normal sexual intercourse two yrs ago" to "nil abdominal pain or fever had *been with someone but no sexual intercourse a few weeks ago* had last normal sexual intercourse 2 yrs ago";

(e) Modifying "reassured about nil infection on the swabs" to "reassured about nil *STI* infection on the swabs";

(f) Modifying "we could examine with speculum to see any tear or infection": to "*due to examine with speculum by H/O to see any tear or infection*";

(g) Adding "asked could see the discharge and verbal consent taken";

(h) Adding "no VE examination";

(i) Adding "advised to continue antifungal treatment as prescribed and if pain or further discharge can use a/b"; and

(j) Adding "advised to contact us if further concern and can contact me".

[20] The amended notes were provided to the HDC together with the practitioner's response to the complaint allegations dated 5 February 2018. The amended notes did not show previous edits to the clinical notes.

[21] After the HDC requested an audit copy of the clinical notes, on 16 March 2018 the practitioner volunteered to the HDC that there had been amendments to the clinical notes. He provided the HDC with an audit report showing the changes and when they had been made.

Suspension

[22] The practitioner was suspended from practising medicine on 20 December 2019, because of his conviction. He has not been permitted to practise medicine in any capacity since that date.

Admission of disciplinary charge

[23] The practitioner admits that his conviction amounts to professional misconduct in that it has brought or is likely to bring discredit to the medical profession pursuant to s 100(1)(b) of the Act and that it reflects adversely on his fitness to practise as a medical practitioner pursuant to s 100(1)(c) of the Act.

[24] The practitioner admits that his conduct in amending the clinical records after receiving RT's complaint to the HDC amounts to professional misconduct in that, either separately or cumulatively, it has brought or is likely to bring discredit to the profession, pursuant to section 100(1)(b) of the Act.

Discussion on liability

The Law

[25] The practitioner is charged under s100(1) of the Act, which provides as follows:

> "100 Grounds on which health practitioner may be disciplined
>
> (1) The Tribunal may make any 1 or more of the orders authorised by section 101 if, after conducting a hearing on a charge laid under section 91 against a health practitioner, it makes 1 or more findings that –
>
> (a) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, amounts

to malpractice or negligence in relation to the scope of practice in respect of which the practitioner was registered at the time that the conduct occurred; or

(b) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, has brought or was likely to bring discredit to the profession that the health practitioner practiced at the time that the conduct occurred; or

(c) the practitioner has been convicted of an offence that reflects adversely on his or her fitness to practise;"

[26] The PCC alleges that:

(a) The practitioner's conduct in relation to the conviction amounts to professional misconduct in terms of s 100(1)(b) and/or reflects adversely on his fitness to practise under s 100(1)(c) of the Act; and

(b) The practitioner's conduct in relation to the retrospective amendment of clinical notes amounts to professional misconduct in terms of s 100(1)(b) of the Act.

[27] The Tribunal as always is mindful of the direction provided in the judgment of then Elias J in *B v Medical Council of New Zealand,* as to the purpose of the disciplinary process: [2]

> The structure of the disciplinary processes as set up by the Act, which rely in large part upon judgment by a practitioner's peers, emphasises that the best guide to what is acceptable professional conduct is the standards applied by competent, ethical and responsible practitioners. But the inclusion of lay representatives in the disciplinary process and the right of appeal to this Court indicates that usual professional practice, while significant, may not always be determinative: the reasonableness of the standards applied must ultimately be for the Court to determine, taking into account all the circumstances including not only usual practise but also patient interests and community expectations, including the expectation that professional standards are not to be permitted to lag. The disciplinary process, in part, is one of setting standards.

2 *B v Medical Council of New Zealand* [2005] 3 NZLR 810; see also *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774.

[28] The approach to the test for professional misconduct under s 100(1)(a) and (b) is well settled.[3] It first requires an objective analysis of whether the practitioner's acts or omissions can be reasonably regarded as constituting:

(a) Malpractice;

(b) Negligence; or

(c) Otherwise meets the standard of having brought, or was likely to bring, discredit to the practitioner's profession.

[29] The second step in this assessment is to consider whether there has been a sufficiently serious departure from those accepted standards as to warrant a disciplinary sanction to protect the public and/or maintain professional standards and/or to punish the practitioner.

[30] In relation to s100(1)(c) of the Act, a conviction charge is more straight forward and does not require any assessment of professional misconduct. The test under this provision is whether there has been a conviction, and if so, if it is one that reflects adversely on a health practitioner's fitness to practise?. This test is not restricted to considerations of a practitioner's physical or mental fitness, but rather relates to whether the complaint, conviction, and related circumstances, impact on the expected standards of professional conduct and public confidence in health practitioners.[4]

[31] "Fitness to practise medicine" includes consideration of the ethical aspects of practice as well as those of a clinical nature.[5] In *Murdoch* the Tribunal stated:[6]

> Fitness to practise cannot, in the context of a conviction, relate only to the practitioner's clinical ability. It must also involve the moral consideration and conduct which offends the law or is immoral or unethical, must affect adversely on the practitioner's fitness to practise. Registration carries with it obligations to behave in a way which is ethical, honest and in accordance with the law. Failure to uphold the law or dishonesty must adversely affect a practitioner's fitness to practise.

[32] The burden of proof is on the PCC to establish that the practitioner is guilty of the charge and to provide evidence that establishes the facts on which the charge is based.

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[3] See *Nuttal* 8/Md04/03; *Aladdin* 12/Den05/04 and 13/Den04/02D; and *Dale* 20/Nur05/09D.
[4] *PCC v Pollock* HPDT 95/Nur06/38P.
[5] *CAC v Dalley* MPDT 8/97/4C.
[6] *Murdoch* 76/Phys06/45P, 19 December 2006.

[33] The civil standard of proof applies, that is, proof to the satisfaction of the Tribunal on the balance of probabilities. The degree of satisfaction will vary according to the gravity of the allegations.[7]

Particulars 1 and 2: Conviction for sexual violation by unlawful sexual connection

[34] The conviction for sexual violation by unlawful sexual connection satisfies s 100(2)(b) of the Act, in that it is a conviction which is punishable by imprisonment for a term of three months or longer.

[35] While the practitioner accepts, he has been convicted, he continues to deny he committed the offence. He does however accept that s 47 of the Evidence Act 2006 applies. Section 47(1) states:

> When the fact that a person has committed an offence is relevant to an issue in a civil proceeding, proof that the person has been convicted of that offence is conclusive proof that the person committed the offence.

[36] The practitioner accepts the fact that he has been convicted and that this conviction has brought or is likely to bring discredit to the medical profession and reflects adversely on his fitness to practise.

[37] The offence relates to a health practitioner's core professional obligation to avoid any unlawful sexual conduct with a patient, as it fundamentally undermines the trust and confidence that the community must have in a health practitioner.

[38] The District Court sentencing notes state that the internal examination was not spontaneous, did not appear necessary and that the 20-year-old victim was in a vulnerable position when the offending occurred, given her position being naked from the waist down and lying on the bed with her legs in the air at the time of the offending. [8]

[39] The Tribunal is clear that this unlawful sexual offending by medical practitioners against any victim (especially those who are patients and/or vulnerable), must always be regarded as morally, ethically, and professionally repugnant.

[40] Registration as a health practitioner is a privilege. It carries with it obligations to comply with the standards expected of those who practise as registered health practitioners. There is no doubt that this offending must adversely reflect on the

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[7] See *Z v Complaints Assessment Committee* [2009] 1 NZLR.

[8] paras 33 to 36 of DC sentencing notes

practitioner’s fitness to practise. It is conduct which clearly brings discredit to the profession and reflect’ s adversely on the practitioner’s fitness to practise.

[41] The Particulars 1 and 2 of the Charge, as laid against the practitioner are both established. The Tribunal is satisfied that the conviction and the offence bring discredit to the practitioner’s profession and reflects adversely on the practitioner’s fitness to practise under s100(1)(b) and (c) of the Act, respectively.

Particulars 3 and 4: Retrospective amendment to notes

[42] The PCC submits the professional guidelines set out in *“Good Medical Practice” (December 2001*) provide general guidance relating to medical practitioners’ conduct and record keeping are relevant. The PCC also refer to the Medical Council’s statement on “*The maintenance and retention of patient records” (August 2008)* which provides for the importance of clear and accurate patient records made at the same time as the events that are recorded or as soon as possible afterwards.

[43] The PCC submits that substantial modification of clinical notes, after receipt of a complaint has the appearance of dishonesty and as such is likely to bring discredit to the medical profession, regardless of the nature of the amendments. Professional disciplinary bodies investigating complaints are reliant on clinical notes to provide an accurate and contemporaneous record of treatment. Amending clinical notes shows a disregard for the relevant professional disciplinary authority.

[44] The PCC also states that the untruthful nature of the amendments, aggravate the circumstances of the offending in relation to the clinical notes. Clark DCJ at paragraph [41] of the sentencing notes referred to the amendment of clinical notes as “fundamentally dishonest”.[9]

[45] The practitioner accepts that making retrospective amendments to his clinical records has brought or is likely to bring discredit to the medical profession.

[46] The Tribunal is satisfied that there was clearly established dishonesty demonstrated by the practitioner in amending the patient’s clinical notes and that as a result this is professional misconduct in that it has brought, or is likely to bring discredit to the profession and was a serious departure warranting such a finding, under s 100(1)(b) of the Act.

[47] Particulars 3 and 4 of the Charge are established.

[9] Sentencing Notes, Judge T V Clark para 41, pg 43

[48] Finally, the Tribunal is satisfied that both separately and cumulatively the conduct as established in Particulars 1-4 amount to professional misconduct under s100(1)(b) of the Act.

Penalty

[49] The Tribunal having been satisfied the Charge is established, must go on to consider whether it is appropriate to order any penalty under s 101 of the Act.

[50] The penalties may include, under 101(1) of the Act:

(a) Cancellation of the practitioner's registration as a health practitioner;

(b) Suspension of his registration for a period for up to 3 years;

(c) An order that the practitioner may only practise in accordance with any conditions as to employment, supervision or otherwise, such conditions not to be imposed for more than 3 years;

(d) An order that the practitioner is censured;

(e) Subject to subsections (2) and (3), order that the health practitioner pay a fine not exceeding $30,000; and

(f) An order that the practitioner pay part or all of the costs of the Tribunal and/or the PCC.

[51] Under s101(2) of the Act, the Tribunal must not impose a fine in dealing with any matter for which the health practitioner has already been convicted by a Court. As a result, The practitioner cannot be ordered to pay a fine in this case, in respect of Particulars 1 and 2 of the Charge.

[52] The appropriate sentencing principles are those contained in *Roberts v Professional Conduct Committee,* [10] where Collins J identified the following eight factors as relevant whenever this Tribunal is determining an appropriate penalty. In particular, the Tribunal is bound to consider what penalty:

(a) most appropriately protects the public and deters others;

[10] *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 2254 at [44] – [51].

(b) facilitates the Tribunal's important role in setting professional standards;

(c) punishes the practitioner;

(d) allows for the rehabilitation of the health practitioner;

(e) promotes consistency with penalties in similar cases;

(f) reflects the seriousness of the misconduct;

(g) is the least restrictive penalty appropriate in the circumstances; and

(h) looked at overall, is the penalty which is "*fair, reasonable and proportionate in the circumstances*".

[53] The objective when determining penalty is described in *Young v Professional Conduct Committee*: [11]

> "The protection and maintenance of professional standards is an important part of the protection of the public. It is through the maintenance of high professional standards that the public is protected. Deterrence is in the same category. This is intended to discourage others from acting the same way reflected in the severity of the punishment imposed."

[54] The Tribunal's role is to determine the appropriate penalty considering the nature of the conduct and the purposes of the Act to protect the public interest and the integrity of the profession.

[55] If an order is made that a practitioner's registration be cancelled, under s 102 of the Act, the Tribunal may fix a date before which the person may not apply for registration again or impose one or more conditions the person must satisfy before the person may apply for registration again.

PCC submissions on penalty

[56] The PCC has asked the Tribunal to impose the following penalties on the practitioner:

(a) Cancellation of the practitioner's registration as a medical practitioner;

[11] *Young v Professional Conduct Committee* HC Wellington CIV 2006-485-1002 1 June 2007.

(b) Imposition of conditions should the practitioner return to practising medicine;

(c) Censure; and

(d) An order that the practitioner pay a contribution of 30% towards costs.

In summary, the PCC submits that in determining the appropriate penalty, the following aggravating features are particularly relevant:

(e) The practitioner had been RT's family doctor since she was 13 years old. The closeness and length of the professional relationship between the practitioner, RT and her family, meant RT and her family had a high degree of trust in the practitioner;

(f) The victim was, as the District Court noted, "*a particularly naïve woman in terms of her own body*"[12] and this meant she was particularly reliant on the practitioner to perform an internal examination but only when medically necessary and in an appropriate manner;

(g) Internal examinations are highly sensitive and intimate matters that require a high degree of trust. Offending in the context of this procedure is a gross breach of trust;

(h) The District Court's sentencing notes show the sentencing Judge did not consider that the practitioner's conduct was "spontaneous".[13] The practitioner's actions in approaching the victim indicated a degree of premeditation; and

(i) Finally, after receiving the complaint from the HDC, the practitioner substantively modified his clinical notes to suggest the examination was a visual examination only in respect of which he had consent from RT. This was "fundamentally dishonest".[14]

[57] The PCC also acknowledged two mitigating features in relation to the practitioner:

(a) His good character and previously unblemished record; and

[12] Sentencing Notes of Judge T V Clark at [36].
[13] Sentencing Notes of Judge T V Clark at [33].
[14] Sentencing Notes of Judge T V Clark at [41].

(b) His acceptance of the disciplinary charge and cooperation in preparing an Agreed Statement of Facts for the Tribunal hearing.

[58] The PCC submit that considering the aggravating features of the case together with the inherent seriousness of the charge and the need to protect the public and maintain professional standards, the only appropriate penalty is cancellation of the practitioner's registration.

[59] The PCC maintain that cancellation is "*almost inevitable for convictions of sexual offending against a patient*".

[60] The PCC also submits certain conditions be imposed, to be met prior to the practitioner's re-registration as a health practitioner, including:

(a) The practitioner is to have completed at his own cost a Sexual Misconduct Assessment Test (SMAT) to be arranged in conjunction with the Medical Council;

(b) The practitioner is to undertake in writing to the Medical Council that for a period of three years after re-registration, he must comply at his own cost, with all directions, recommendations, and requirements of the Medical Council, including any requirements of proof of compliance;

(c) The practitioner must undertake in writing to the Medical Council to abide by the directions of a senior chaperone pursuant to the Medical Council's Chaperone protocol;

(d) The practitioner is to undertake in writing that for a period of three years after re-registration, he will advise any future employers of the Tribunal's decisions and orders; and

(e) The practitioner is to undertake, that for a period of three years after re-registration, he will not work in any sole practice or sole charge role.

[61] Finally, the PCC submitted that an order censuring the practitioner was also required to reinforce to the practitioner, and the profession, the wholly unacceptable nature of his conduct.

Practitioner's submissions on penalty

[62] Ms Stuart, counsel for the practitioner, submitted that an appropriate penalty would involve the following:

(a) Censure;

(b) A 12-month suspension from practice, noting the practitioner had already suffered more than two years' suspension;

(c) Conditions including:

(i) an undertaking to have a chaperone present for any intimate examinations with female patients for the rest of his career
(ii) to advise future employers for three years of the Tribunal's decision and orders, and
(iii) to undergo a Sexual Misconduct Assessment Test (SMAT).

(d) The practitioner also accepted that an order requiring him to pay a 25% contribution to costs of the Tribunal and the PCC, would be appropriate.

[63] In summary, the practitioner's submissions on penalty are:

(a) The Court in the sentencing had not describe RT's vulnerability as "high";

(b) The practitioner's conduct was not sexually motivated. Counsel for the practitioner noted that it is not an element of the criminal charge of "sexual violation by unlawful sexual connection" that the practitioner has a sexual motive, or intends the connection to be indecent;

(c) The Court in the sentencing found the offending at the lower end of the spectrum and that the sentence was discounted by 25 percent to reflect the practitioner's good character;

(d) The practitioner has been a source of support and stability for his own family, patients, employees, colleagues, and wider community. His character references produced to the Court and Tribunal show that he is held in high regard amongst those who knew him and that the criminal conduct was outside what they knew of his character;

(e) The character references from female colleagues attest to the practitioner's behaviour being unthreatening towards women.

(f) Removing the practitioner's registration will inevitably have far reaching negative consequences for the people that depend on him;

(g) The practitioner is willing to work under any conditions imposed upon his practice by the Tribunal; and

(h) While the practitioner denies the offending, the practitioner accepts the steps in his examination of RT were incorrect and that a chaperone ought to have been present. As a result, he considers that he has undergone rehabilitation and personal contemplation to reflect on the incident. He has expressed remorse and regret for his actions which he says affirms that he is highly unlikely to reoffend.

Counsel for the practitioner submits that the purposes of discipline as articulated in *Roberts v PCC* [15] have, in part, already been met by the practitioner's criminal sentence.

[64] Ms Stuart submits there can be no reasonable basis to find that the practitioner poses any ongoing risk to the public, for the following reasons:

(a) He has learnt his lesson from criminal conviction and is motivated to comply with any conditions that will provide reassurance to the Tribunal about matters of public safety;

(b) The offending was not motivated by any sexual intention;

(c) The criminal conviction was the subject of mainstream media publication. The public therefore have access to information about matters giving rise to his conviction and can make their own decision as to whether they go to him for medical treatment; and

(d) Many former patients and members of his community are already aware of his offending and maintain their support for him.

[65] In respect of the purpose of maintaining standards, the practitioner accepts it is unacceptable for anyone to commit offences under the Crimes Act 1961 but submits given the effect of his conviction on him and the time he has spent out of practice, there is no added deterrent in making an example of him with a harsh

[15] *Roberts v PCC* HC Wellington CIV-2012-404-3916, 12 December 2012 per Collins J.

penalty. This is particularly so as a penalty of imprisonment has already been given and served.

[66] Counsel for the practitioner submits that despite the sentencing statement in the *Roberts* case, punishment is for the criminal courts and not a purpose for this Tribunal.[16] Rather, the public interest is in rehabilitation of otherwise competent professionals.

[67] In submissions, counsel for the practitioner identified the following mitigating factors:

(a) The offending was brief and isolated. There was no evidence of any sexual motivation. It is not accepted the practitioner had any predetermined intention of sexually violating RT;

(b) The alterations to the clinical notes were made in good faith to reflect his recall of what had occurred; and

(c) He has shown good insight into the concerns raised regarding sexual boundaries and the need for express consent when undertaking intimate examinations.

[68] The practitioner's counsel submits the Tribunal should consider the effect the earlier publication of the criminal offending has had on the practitioner and his family, in particular, the severe impact it has had on his wife and her health. Finally, counsel for the practitioner submits cancellation is not required to meet the purposes of the Act in this case. The practitioner otherwise accepts some period of suspension and a censure is required.

Comparative cases on penalty for sexual offending

[69] The Tribunal must have regard to other decisions to ensure an element of consistency. However, we do note the caution that the Tribunal "*should apply an element of discretion when imposing penalty because each case will depend on and be peculiar to its own particular facts and circumstances.*" [17]

[16] *Z v CAC* [2009] 1 NZLR at [97]; and *Singh v DP* [2014] NZHC 2848.
[17] *Re Chiew* Health Practitioners Disciplinary Tribunal 180/Phar08/95P, 30 September 2008 at [102].

[70] The practitioner's counsel submits the Tribunal should consider the effect the earlier publication of the criminal offending has had on the practitioner and his family, in particular, the severe impact it has had on his wife and her health. Finally, counsel for the practitioner submits cancellation is not required to meet the purposes of the Act in this case. The practitioner otherwise accepts some period of suspension and a censure is required.

Comparative cases on penalty for sexual offending

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[72] The PCC advised the Tribunal it has been unable to find any Tribunal decision where a penalty short of cancellation has been imposed where there has been a conviction for sexually offending against a patient.

[73] The Tribunal was referred to previous Tribunal cases where practitioners had breached sexual boundaries with patients and cases where practitioners received criminal convictions for sexual offending against a patient. The cases referred to include:

(a) *Davis* [19] – An osteopath was convicted of eight counts of sexual violation and seven counts of indecent assault. The offending occurred during the practitioner's consultations with patients. The conduct included massaging the victims' breasts, the outside of the victims' genitals and sucking a victim's nipple. The Tribunal determined the convictions reflected adversely on the practitioner's fitness to practise and ordered their registration be cancelled from the date of the decision, that he be censured, and conditions be imposed on re-registration;

(b) *Henderson* [20] – A nurse plead guilty to three counts of indecent assault of three victims. The offending included touching the genital area of two victims under their underwear and touching the breasts of a third

[18] *Re Chiew* Health Practitioners Disciplinary Tribunal 180/Phar08/95P, 30 September 2008 at [102].
[19] *Davis* 645/Ost14/284P.
[20] *Henderson* 406Nur11/186

victim. The practitioner was sentenced to nine month's intensive supervision in the District Court. The Tribunal cancelled the practitioner's registration despite the offending occurring 12 years previous. A recommendation was made that the Tribunal re-consider the practitioner's registration after 12 months on certain conditions. The Tribunal ordered the practitioner to pay costs of 30%;

(c) *Hong* [21] – A chiropractor was convicted of five charges of indecent assault against patients in the course of massage treatment. He pleaded guilty and was sentenced in the District Court to seven months home detention and ordered to pay $2,000 emotional harm reparation to each victim. The Tribunal stated that there was "really no question but that the practitioner's registration be cancelled" and that "not to cancel registration would be inconsistent with past cases of the same kind".[22] The practitioner was also censured, ordered to pay costs of 25% and an order was made that the practitioner not apply for reregistration for two years. Conditions were imposed should the practitioner reapply.

(d) *Spittle* [23] – A practitioner was convicted of two charges of indecent assault. The offending consisted of touching the patient's breasts and groin on two occasions in the context of a doctor-patient relationship. The charges were historic. The practitioner's registration was cancelled, he was censured and ordered to pay costs of 25%. The PCC submit this was the most similar case to the present.

(e) *Chawdry* [24] – A doctor was convicted of 13 charges of indecent assault and one of sexual violation. The offending involved masturbating patients and on one occasion digitally penetrating a patient's anus during consultations. The practitioner had claimed the physical touching was a legitimate medical procedure as part of a sexual health check. The practitioner's registration was cancelled, conditions were imposed should they apply for registration, he was censured and ordered to pay 30% costs. The PCC referred to the following statement from the Tribunal: [25]

> It is well established that the [Medical Council] has a zero-tolerance position on doctors who breach sexual boundaries with

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[21] *Hong* 1150/Chiro20/476P
[22] At [19].
[23] *Spittle* 969/Med17/406P.
[24] *Chawdhry* 1053/Med19/425P at [34].
[25] At [34].

a patient. The Council standards also require doctors to act honestly and ethically and follow guiding principles with regard to never abusing patients' trust or the public's trust in the profession. Moreover, the NZMA Code of Ethics provides that doctors should ensure that all conduct in the practise of their profession is above reproach. Exploitation of any patient, whether it be physical, sexual, emotional or financial, is unacceptable and the trust embodied in the doctor-patient relationship must be respected.

(f) *Dawson* [26] – A practitioner was convicted of representative charges of indecent assault and exploitative sexual conduct by touching the breasts of a female patient during medical examinations. The Tribunal cancelled the practitioner's registration, censured him, imposed conditions should he apply for reregistration and ordered costs of 15%.

(g) *Ahmad* [27] - A practitioner was convicted of six charges of indecent assault against six female patients. The offending included touching patient's breasts during a medical examination. The practitioner denied the offending. The Tribunal cancelled the practitioner's registration, censured him, and ordered the payment of 30% of costs.

[74] Ms Stuart for the practitioner, referred to the case of *Tamma*.[28] It is submitted for the practitioner that this is the most comparable case to the present. In *Tamma* the practitioner was also in a General Practitioner. The patient presented with symptoms of a urinary tract infection. The practitioner's established conduct included the following misconduct:

(a) He had the patient lie on an examination table and undertook an abdominal examination over her clothing;

(b) He had her remove her lower clothing including her underwear and performed a leg massage;

(c) He undertook a vaginal examination to check for sexually transmitted infections. This included touching the patient's clitoris without gloves;

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[26] *Dawson* 1028/Med19/435P.
[27] *Ahmad* 982/Med18/414P.
[28] *Tamma* 577/Med13/247D.

(d) He had her remove her upper clothing before palpating her armpit area. The doctor then palpated her legs and back; and

(e) No chaperone was offered to the patient and no privacy was given while the patient undressed.

(f) Finally, the doctor also made retrospective changes to clinical notes after becoming aware the patient had been unhappy with the treatment.

[75] In *Tamma* the practitioner's registration was not cancelled. He was censured and suspended for 18 months.

[76] The practitioner also had conditions placed on his practising certificate, for three years from his resumption of practise, which included having a chaperone present when seeing female patients notifying employers and patients of this condition and undergoing random audits on his clinical notes. Finally, the Tribunal also recommended that the Medical Council require that Dr Tamma undergo a Sexual Misconduct Assessment and professional boundaries course.

[77] Counsel for the practitioner seeks to distinguish the cases the PCC referred to, on the basis that each of the examples of offending in those cases were substantially more serious and clearly sexually motivated. Ms Stuart submits that there is therefore no presumption of cancellation as the PCC submits. The practitioner identified the following distinguishing features in cases referred to be the PCC:

(a) In all of the cases, except two, there were multiple victims;

(b) In both *Spittle* and *Dawson,* while there was only one victim in each, the practitioner was convicted of repeat offending against the patients who were exceptionally vulnerable;

(c) The touching was, in certain cases, significantly more serious. Counsel stressed that as the convictions in these cases were for indecent assault, the Court found the offending was intended to be sexual or indecent and therefore the offending was more serious than The practitioner's offending; and

(d) The victims in these cases were more vulnerable than in the present case.

Comparable cases on penalty for alteration of records

[78] The Tribunal was also referred to the following comparable cases:

(a) In *Tamma* [29], the practitioner made substantial retrospective changes to his clinical notes after learning the patient was unhappy with the treatment. The penalty ordered in conjunction with the other offending already discussed above, resulted in a suspension for 18 months.

(b) In *Twentyman* [30], the Tribunal found the doctor had prescribed drugs when not necessary and found the doctor had added substantially to his clinical notes and falsely asserted the notes were contemporaneous. The doctor was suspended for nine months, fined $7000 and ordered to pay costs.

(c) In *Martin* [31], the doctor was investigated for repeatedly missing red flags in her patient's presentation to her. The practitioner relied on her notes in her defence, but it became apparent they had been altered. The practitioner was censured, fined $15,000 and ordered to pay costs. A fine of $10,00 was substituted on appeal.

Tribunal consideration of penalty

[79] The Tribunal has considered the relevant sentencing principles and made an assessment of the aggravating and mitigating factors identified by both counsel.

[80] The Tribunal has determined the key aggravating factors in this case are as set out below:

(a) The practitioner, as the family doctor for RT since she was a young teenager, meant that his professional relationship with RT and her family involved a high degree of trust and the offence was a serious breach of that trust;

(b) The internal examination procedural performed was a highly sensitive and intimate matter, that meant that the offending was something more than other inappropriate touching on the outside of

[29] *Tamma* 577/Med13/247D.
[30] *Twentyman* 717/Med14/280P
[31] *Martin* 58/Med05/15D

clothing or on a less intimate area of the body. In this context the offence was a gross breach of trust;

(c) The practitioner's conduct was not "spontaneous".[32] The practitioner's actions in approaching the victim indicated a degree of premeditation;

(d) The practitioner's modified clinical notes were "fundamentally dishonest" [33] and designed to hide the offending rather than admit it; and

(e) The continued lack of acknowledgment of the offending even after a conviction and appeal process, discloses a lack of any genuine remorse and insight, that is an aggravating factor in relation to the practitioner's conduct.

[81] As against these factors, the Tribunal does accept two mitigating factors that the practitioner is entitled to have acknowledged, including :

(a) The practitioner has not previously appeared before this Tribunal. He does have a previously unblemished record as a medical practitioner; and

(b) He has until this offending been a well-respected practitioner, as confirmed by the number of his character references produced to the Tribunal.

[82] The Tribunal does not accept the practitioner's submission that this offending did not involve a serious sexual offence. The conviction and term of imprisonment of more than two years and 10 months, speak for themselves. The practitioner's attempt to minimise the nature of the offending, does not serve him well before this Tribunal. While it may not be regarded as at the high end of offending dealt with by a criminal Court, it is extremely serious professional misconduct before this Tribunal.

[83] The Tribunal is also not willing to accept that the practitioner's submission that he has demonstrated appropriate insight into his offending. This is because the practitioner continues to deny the offending and maintains that the clinical note alterations were made in good faith to reflect what he states occurred. This is not consistent with appreciating the gravity of his offending.

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32 Sentencing Notes of Judge T V Clark at [33].

33 Sentencing Notes of Judge T V Clark at [41].

[84] The Tribunal has also considered the comparable decisions referenced by counsel. In summary, these cases confirm the following:

(a) Where a conviction has been received for sexual offending, cancellation is the most likely penalty. This has been the outcome in previous cases that on their facts are at least as serious as The practitioner's case, in particular in *Spittle* [34] and *Dawson* [35] ; and

(b) Inevitably, some individual cases, such as *Tamma,* may not result in cancellation. However, in such cases the practitioner is often judged by the Tribunal as having a much greater acceptance and insight into his level of offending, which can result in a lesser penalty [36].

[85] The Tribunal has determined that the serious sexual violation conviction paired with the practitioner's lack of acceptance of the conviction and lack of genuine insight or remorse, means the only possible penalty is cancellation. While the Tribunal did give serious consideration to a penalty of suspension, we do not consider this would appropriately reflect the serious nature of the conviction or meet the Tribunal's important role in setting standards for practitioners where a practitioner continues to deny the real gravity of their misconduct.

[86] The Tribunal has determined that it is necessary to impose the following penalty orders, which together reflect the Tribunal's important role in protecting the public and for setting and maintaining professional standards. The Tribunal orders cancellation of the practitioner's registration, censure and conditions on the practitioner's re-registration, which are set out in full in the Orders of the Tribunal on the final pages of this decision.

[87] The Tribunal does acknowledge the lengthy period of suspension suffered by the practitioner already. However, this has largely been due to his appeals relating to the conviction. The practitioner has continued to deny the conduct at the heart of the offending, which otherwise might have made a period of suspension available as the least restrictive penalty.

Costs

[88] In relation to costs, the Tribunal records that it has used a starting point that a health practitioner will generally be expected to contribute 50% of the actual and reasonable costs of the Tribunal and PCC.[37]

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[34] *Spittle* 969/Med17/406P

[35] *Dawson* 300/Nur09/139P

[36] *Tamma* 577/Med13/247D.

[37] *Coorey v PCC*, HC Wellington, AP 23/94, 14 September 1995.

[89] In the present case, the Tribunal has determined a further discount is appropriate to reflect the practitioner's cooperation with the PCC and Tribunal in the conduct of this proceeding. The Tribunal also acknowledges that the practitioner has been unable to work as a medical professional since his suspension. The practitioner nevertheless should properly contribute to the costs of the proceeding.

[90] The Tribunal's costs and disbursements incurred up to and including the date of the hearing were estimated at $14,829. The PCC costs and disbursements claimed amounted to $21,876.27.

[91] The Tribunal considers the proper contribution to costs ordered to be paid by the practitioner in this case should be 30% of the total costs of both the Tribunal and PCC.

Suppression orders

[92] The practitioner seeks a permanent non-publication order in relation to his name and any identifying features, under s95 of the Act.

[93] The practitioner submits the order is desirable and necessary for the protection of his wife who is [ ] unwell and at the risk of serious harm, if there is further publication of his name in relation to this matter. Counsel also argues that further publication will risk the practitioner's rehabilitation by inhibiting his return to practice through further publicity.

[94] Counsel for the practitioner acknowledged that this was an unusual application, in that there has already been extensive media publication of the practitioner's name in relation to the criminal conviction that forms the basis of this matter before the Tribunal.

[95] The evidence of risk of harm has been set out in the affidavit of the practitioner dated 6 August 2021, filed in support of his application for interim name suppression. The same grounds are relied upon in this current application.

[96] The practitioner's affidavit records the distress that the criminal proceeding and media publication that followed, caused his wife. His affidavit references her admission to [ ] hospital units twice since 2019 and that he is concerned about [ ] for her.

[97] The practitioner has also produced two [ ] reports dated July 2021 and August 2021, which both confirm his wife's on-going [ ] healthcare needs. The

reports note that there likely remains on-going risk of [ ] health episodes and confirm that the practitioner's wife suffers from [ ]. A further short medical report was produced dated January 2022, which confirmed the on-going stressors for the practitioner's wife related to this proceeding and other matters.

[98] The Tribunal accepts that her [ ] condition inevitably puts her at risk of worsening symptoms due to on-going stressors in her life, including this proceeding. However, it does appear that the practitioner's wife has significant on-going [ ] health support and this has allowed her to deal with the already significantly adverse media relating to the practitioner's conviction and his appeals over several years.

Legal principles on suppression

[99] Section 95 of the Act states that every hearing of this Tribunal must be held in public unless the Tribunal orders otherwise.

[100] Under s95 of the Act, the Tribunal must consider whether it is "desirable" to prohibit publication of the name of the applicant after considering the interest of any person and the public interest. As a result, the Tribunal must balance the presumption of openness in judicial proceedings with the private interests of the individuals effected.[38]

[101] In *Beer v A Professional Conduct Committee* the Court stated "*the balancing exercise is case specific, and little assistance in weighing each factor may be gained from other decisions*.[39]

[102] The Tribunal considers the presumption of openness in judicial proceedings when considering options for non-publication.[40] This presumption creates a presumption against name suppression, particularly where the practitioner has been found guilty of professional misconduct.[41]

[103] Public interest factors identified by the Tribunal and Court include: [42]

(i) the transparency and accountability of disciplinary proceedings;

(ii) protection of the public;

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[38] *Professional Conduct Committee v Lal* HPDT 1129/Nur20/478P, 9 December 2020 at [63].

[39] *Beer v A Professional Conduct Committee* [2020] NZHC 2828 at [30].

[40] *Professional Conduct Committee v Lal* HPDT 1129/Nur20/478P, 9 December 2020 at [63].

[41] *Ben-Dom v Professional Conduct Committee* [2020] NZHC 3094 at [141].

[42] *Professional Conduct Committee v Dr H* HPDT 1105/Med19/448P, 17 August 2020 at [218].

(iii) maintenance of professional standards;

(iv) public interest in knowing the identity of a health practitioner charged with and/or found guilty of a disciplinary offence; and

(v) the risk of unfairly impugning other practitioners.

[104] The private interest factors include the interests of the practitioner, his family, the complainant, or any other parties who may be impacted by publication of the practitioner's name.

Submissions of the practitioner

[105] In summary, counsel for the practitioner submits the non-publication order should be made for the following reasons:

(a) The threshold for suppression in disciplinary cases is significantly lower than the test applying to criminal cases and therefore the fact the practitioner was declined name suppression in the criminal jurisdiction, does not mean that non-publication orders cannot be made in this jurisdiction; [43]

(b) The Tribunal must have at the forefront of their mind the purposes and principles of the Act, primarily protecting the health and safety of members of the public.[44] It is submitted the practitioner's future patients do not stand to gain from further publication of the practitioner's name as they are not at the risk of harm, and they can access information online about his offending;

(c) The public interest in the openness of proceedings can be achieved through an anonymised decision.

(d) It is desirable to give the practitioner an opportunity to rehabilitate without the harm of further publication. Further publication of his name will cause further harm to his ability to return to practise. The Tribunal was referred to Keane J's comments in *A v PCC*: [45]

> "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

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[43] *Citing ABC v CAC* [2012] NZHC 1901 at [44].

[44] Citing *Director of Proceedings v S* 850/Med15/318D (Health Practitioners Disciplinary Tribunal, 27 September 2016).

[45] *A v PCC* HC Auckland, CIV-2008-404-2927, 2/9/08 per Keane J.

confidence…must outweigh the interest 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".

(e) There is a real risk that publication will cause serious harm to his wife's [ ] health. Her [ ] health issues can be directly attributed to her husband's prosecution and this Tribunal proceeding. Counsel referred the Tribunal to previous cases where the risk to a family member was held to be decisive in granting non-publication orders [46]; and

(f) The private interests of the practitioner and his wife clearly outweigh the public interest in this matter.

Submissions for the PCC

[106] The PCC opposes the application for name suppression for the practitioner, on the following grounds:

(a) While the test for suppression orders in criminal proceedings is more onerous for a defendant, the Court of Appeal decision issued in 2020 in the practitioner's case is still instructive. The Court of Appeal determined the public interest factors outweighed the concerns for the practitioner's wife's safety by a "wide margin".[47] The PCC highlighted the following passage of the Court of Appeal decision: [48]

> "In the present case, there is a very strong public interest in the public knowing the identity of a medical practitioner found guilty of sexually violating a patient.
>
>> We are told it is unlikely the practitioner will practise medicine again. That, however, is not a persuasive reason for granting him name suppression. There are three factors that weigh heavily in favour of the public interest in publishing the practitioner's name:
>>
>> (a) The public interest in knowing the identity of any person convicted of a serious criminal offence. This does not involve the courts pandering to prurient curiosity. Rather, it reflects the public importance of the court conducting their business in an open and transparent manner.

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[46] *ABC v CAC*; *B V R* and *TR*
[47] *H v R* [2020] NZCA 487 at [43].
[48] *H v R* [2020] NZCA 487 at [40] – [41].

(b) In this case, the name of the practice where the practitioner worked is able to be published. Publishing the name of the practice while suppressing the practitioner's name risks impugning other male doctors in the practice.

(c) As noted by T [the victim], publishing the practitioner's name may encourage other victims to come forward.

(b) Publication is necessary to ensure that patients can make informed choices about their medical providers.[49] Without publication of the disciplinary proceedings, patients may have inadequate information and may be left with the mistaken belief that no disciplinary action has been taken against the practitioner.

(c) The PCC submit publication was particularly important where there had been media articles published that reported the practitioner is "not practising" which may mislead the public into a belief that it is not the same practitioner if he is permitted to practise again;

(d) Rehabilitation sought by the practitioner is limited to his desire to resume practise, as he continues to deny the offending. The practitioner's desire for non-publication is simply to distance himself from the original offending; and

(e) The practitioner's wife has suffered [ ] health issues since the commencement of the criminal investigation in 2018, but it is clear these symptoms are due to multiple stressors. It appears from the medical evidence that many of the [ ] health concerns arise from the stressor related to whether the practitioner can resume practise rather than the publication of his name.

(f) The PCC maintain the practitioner's wife has adequate support and that overall, the private interests of the practitioner's wife do not outweigh the public interest.

Comparable cases

[107] The Tribunal was referred to the following cases, which were of particular assistance by way of comparison:

[49] Citing *Y v Attorney General* [2016] NZCA 474, [2016] NZAR 1512.

(a) *ANG v PCC* [50] – A practitioner was found guilty in relation to fraudulent prescribing of medications for the purposes of feeding his own addiction over many years. The Tribunal censured him, ordered him to pay a fine of $8,000 and imposed conditions on his practice. He was not suspended. Non-publication was allowed in light of the rehabilitation factors present and the risk of the adverse effect publication posed to his rehabilitation;

(b) *ABC v CAC* [51] – A doctor was found guilty of a disciplinary offence involving a sexual relationship with a 16-year-old patient. The High Court considered an appeal on the grounds of risk to his family. His wife was a teacher, and her credibility was put in jeopardy, as a consequence of the nature of the offending proven against her husband. The High Court granted name suppression knowing that the practitioner's wife "would be undoubtedly harmed" in the practice of the profession; [52]

(c) *TR* [53] – A nurse convicted of indecently assaulting a girl under the age of 12 years was refused name suppression. He was sentenced to two years imprisonment. The practitioner's 11-year-old daughter was subject to bullying from her peers because of her father's conviction. The decision was subject to an appeal in the High Court where the PCC recognised that the family member was at a risk of harm to the extent it was desirable for permanent suppression to be granted and consented to an order being made quashing the Tribunal's decision; and

(d) *X v DP* [54] – A practitioner appealed a refusal to grant name suppression after he had plead guilty to sexual intimacy, short of intercourse, with a patient during medical treatment of her. His application was based on the adverse effect of the publicity to his and his wife's health. The Court granted permanent suppression to protect the wife's health.

Discussion

[108] The Tribunal has considered the application in accordance with the requirements of s95 of the Act. The Tribunal must consider whether it is "desirable"

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[50] *ANG v PCC* [2016] NZHC 2949

[51] *ABC v CAC* HC Christchurch CIV 2011-409-000992, 1 August 2012.

[52] At [56].

[53] *TR* 835/Nur 16/350P (9 August 2016)

[54] *X v DP* HC Wellington CIV-2004-412-10, 7 August 2014.

to prohibit publication of the name of the applicant after considering the interest of any person and the public interest.

[109] The Tribunal is not satisfied that, in all the circumstances of this case, it is desirable to grant name suppression to the practitioner.

[110] The Tribunal is satisfied the openness, transparency, accountability, and public interest in knowing and reporting the practitioner's name and this disciplinary outcome, significantly outweighs the private interests of the practitioner and his wife for the following reasons:

(a) The practitioner's name has already been published following the criminal proceedings and this publicity continues to exist online. However, it does not deal with the outcome of this important professional disciplinary proceeding before the Tribunal;

(b) It appears that the practitioner may well seek re-registration as he has made submissions about his rehabilitation into the profession. In this circumstance, publication of the disciplinary proceedings will be important to allow patients to make informed decisions about who they choose to be their medical practitioner;

(c) The Tribunal is concerned that if the suppression application is granted the public will be left with the incorrect impression that the practitioner has not been disciplined by this Tribunal and that he is either not practising or free to return to practice without any conditions on his practice. The public have a significant and weighty interest in knowing this, now that the practitioner has been found guilty by this Tribunal; and

(d) While the practitioner's wife has unfortunately suffered because of the practitioner's misconduct and the media attention, we are satisfied from the evidence presented that she is supported with her on-going [ ] health and that the stressors for her are not entirely related to this proceeding. Those health issues will continue to exist irrespective of any further publication in this proceeding. The Tribunal accepts there will be some further risk to her health as a result of publication, but it is not sufficient to outweigh the strong public interest factors in favour of publication in this case.

Results and Orders

[111] The Orders of the Tribunal are as follows:

(a) The Charge laid against the practitioner is established under both s100(1)(b) and (c) of the Act;

(b) The practitioner's registration as a health practitioner is to be cancelled under s101(1) of the Act, to take effect 20 working days from the date of this decision;

(c) Under s102(1)(a) of the Act, the practitioner is not permitted to reapply for registration again, before the expiry of 12 months from the date the cancellation of his registration takes effect;

(d) Under s102(1)(b) of the Act, if the practitioner seeks re-registration, there are five conditions which the practitioner will be required to satisfy before he may apply before re-registration, including:

i. The practitioner must confirm to the Medical Council that he has completed, at his own cost, a Sexual Misconduct Assessment Test (SMAT) to be arranged and approved by the Medical Council;

ii. The practitioner is to undertake in writing to the Medical Council, that for a period of three years after re-registration, he will comply at his own cost, with all directions, recommendations, and requirements of the Medical Council, including its requirement for proof of compliance with any conditions;

iii. The practitioner must undertake in writing to the Medical Council, that he will abide with the Medical Council's Chaperone protocol for a period of three years after re-registration and that his chaperone cannot be any family member or relative of the practitioner;

iv. The practitioner is to undertake in writing to the Medical Council that for a period of three years after re-registration, he will advise any future employers of the Tribunal's decisions and orders; and

v. The practitioner is to undertake that for a period of three years after re-registration he will not work in any sole practitioner role or in a sole charge General Practitioner role.

(e) The practitioner is censured to mark the disapproval of the Tribunal;

(f) The practitioner is ordered to pay 30% of the costs of the PCC and the Tribunal, to be paid as follows:

i. $4,448 in respect of the costs and disbursements of the Tribunal; and

ii. $6,563 in respect of the costs and disbursements of the PCC.

(g) The Tribunal orders publication of the practitioner's name. The application for permanent name suppression is declined. The practitioner has 20 working days after the date of this decision to appeal this decision not to grant the non-publication order sought, after which time, the practitioner's interim name suppression will be discharged.

(h) The Tribunal orders permanent suppression of the details of the practitioner's wife's health under s95 of the Act.

(i) Pursuant to s 157 of the Act, the Tribunal directs the Executive Officer to publish this decision and a summary on the Tribunal's website and to request the Medical Council to publish either a summary of, or a reference to, the Tribunal's decision in its professional publications to members, in either case including a reference to the Tribunal's website, to enable interested parties to access the decision.

DATED at Auckland this 5th day of April 2022

Maria Dew QC
Chair
Health Practitioners Disciplinary Tribunal