



New Zealand
Health Practitioners
Disciplinary Tribunal

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DECISION NO 718/Med15/308P

IN THE MATTER of the Health Practitioners
Competence Assurance Act 2003
("the HPCA Act")

-AND-

BETWEEN a Professional Conduct Committee
etc

AND **Dr Daniel Lawrence Quistorff** of
Auckland, Registered Medical
Practitioner.

BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING held at Auckland on Tuesday 5th May 2015

TRIBUNAL: Ms M Dew (Chair)

Mr H O'Rourke, Dr B Bond, Dr W Rainger, Dr P Stone (Members)

Miss D Gainey (Executive Officer)

Ms J Kennedy (Stenographer)

APPEARANCES: Ms K Feltham for the Professional Conduct Committee ("PCC")

Ms G Phipps for the Practitioner.

Introduction

1. Dr Daniel Quistorff is a registered medical practitioner based in Auckland. A Professional Conduct Committee (PCC) appointed by the Medical Council of New Zealand has laid charges against the practitioner before this Tribunal.
2. The practitioner faces one Notice of Charge dated 30 January 2015, which contains two charges. The first charge being that on 3 April 2014, the practitioner obtained a conviction under the Crimes Act 1961 for making a false document, which is alleged to be a conviction that reflects adversely on the practitioner's fitness to practise under s100(1)(c) of the HPCA Act.
3. The second charge alleges that on 13 May 2013 and 15 January 2014, Dr Quistorff issued two referral letters that amounted to practising his profession while not holding a current practising certificate in breach of s100(1)(d) of the HPCA Act.
4. At the commencement of the hearing there were two minor amendments sought to each of the charges. There was no objection taken by the practitioner and the amendments were granted by the Tribunal.

The Notices of Charge

5. The charges as amended are set out below:

*“Pursuant to section 81(2) of the Act the Committee charges that **Dr Daniel Lawrence Quistorff**, registered medical practitioner, of Auckland:*

Charge 1 (referral of convictions)

On 3 April 2014 Dr Quistorff was convicted of 37 charges of making a false document pursuant to s256(2) of the Crimes Act 1961, an offence punishable by 3 years imprisonment and the convictions reflect adversely on his fitness to practise as a medical practitioner under section 100(1)(c) of the Act.

Charge 2 (practising without a current practising certificate)

1. *On 22 December 2011 Dr Quistorff's practising certificate was suspended by the Medical Council. Dr Quistorff's practising certificate*

expired in February 2012.

2. *By letter dated 13 May 2013, Dr Quistorff referred Ms G to Dr I, a rheumatologist.*
3. *By letter dated 15 January 2014, Dr Quistorff referred Ms N to Dr I.*
4. *By practising his profession while not holding a practising certificate Dr Quistorff breached s100(1)(d) of the Act.*

The hearing

6. The hearing of the charges before this Tribunal, have proceeded on the basis of an Agreed Statement of Facts and an Agreed Bundle of Documents. The Agreed Bundle of Documents included inter alia, the following:
 - (a) Mr Quistorff's Medical Council Registration Summary;
 - (b) The District Court notification of conviction for Dr Quistorff for 3 April 2014;
 - (c) The sentencing notes of Judge Mathers dated 3 July 2014;
 - (d) The letters sent between Dr Quistorff and Dr I in May 2013 and January 2014 and Dr I's letter of complaint sent to the Medical Council dated 6 May 2014.
7. The practitioner does not dispute the charges as laid, though it remains for the PCC to establish the charges to the appropriate standard of proof.

The Facts

8. The chronology of facts set out below is based on the Agreed Statement of Facts and Bundle of Documents produced to the Tribunal.
9. Dr Daniel Quistorff graduated in 2008 from the University of Auckland with a MBChB. He is registered under the general scope of practice.

Charge 1 – Conviction

10. On 22 December 2011, the Medical Council of New Zealand suspended Dr Quistorff's practising certificate following concerns from the Police and

Auckland District Health Board about Dr Quistorff issuing false medical certificates.

11. Dr Quistorff's practising certificate expired on 28 February 2012 and was not renewed.
12. In 2012, charges of forgery were brought against Dr Quistorff in the Auckland District Court. On 3 April 2014, Dr Quistorff was convicted in the District Court on 37 counts of making a false document, pursuant to s256(2) of the Crimes Act 1961.¹ This conviction related to his having issued 37 false medical certificates to language students in Auckland during 2011.
13. On 3 July 2014, Dr Quistorff was sentenced by the Court to 300 hours community work and 12 months supervision.
14. The facts surrounding the convictions are as follows:
 - (a) Between April 2011 and October 2011, Languages International, an Auckland based English language school, received a number of medical certificates from the Auckland District Health Board signed by Dr Daniel Quistorff. All these certificates were hand written and had no hospital stamp. The majority also did not have the NHI number of the patient.
 - (b) Medical certificates are used by students to excuse their absence from class in the same way that an employee might have to provide one to an employer.
 - (c) The Department of Immigration or a scholarship provider requires high levels of attendance in order for a student to have their visa or scholarship renewed and a medical certificate will excuse absence. The school is bound to provide to both Immigration New Zealand and the scholarship provider accurate attendance levels of the relevant student and accordingly, they rely on the validity of medical certificates they receive

¹ S256(2) Crimes Act 1961 provides "everyone is liable to imprisonment for a term not exceeding 3 years who makes a false document, knowing it to be false, with the intent that that it in any way be used or acted upon, whether in New Zealand or elsewhere as genuine"

to provide this information. Dr Quistorff had no knowledge of these school regulations or procedures.

- (d) Languages International subsequently received four medical certificates for students written in the name of Dr Y, []. Staff from the school recognised the handwriting on these certificates to be the same as the certificates signed by Dr Quistorff.
- (e) In October and November 2011, the Department of Language Studies at Unitec received five medical certificates signed by Dr Y, []. These certificates did not have a registration number or an address.
- (f) As a result of concerns from the two language schools the Auckland District Health Board (ADHB) began an investigation. Those enquiries revealed that Dr Daniel Quistorff did work at Auckland City Hospital. He mainly worked night shifts in general surgical and other surgical speciality services. Dr Quistorff never worked in the Accident and Emergency Department.
- (g) There is only one Dr Y registered with the Medical Council of New Zealand. He is a []. Dr Y was shown the medical certificates signed in his name and advised that he did not write or sign any of the certificates in question. He has never worked in the Emergency Department at Auckland Hospital.

15. Dr Quistorff was suspended by the Medical Council on 22 December 2011, following the ADHB complaint. The matter was subsequently referred to the Police and charges were laid in the District Court. Dr Quistorff defended the charges under the Crimes Act but was found guilty.

District Court sentencing notes

16. The sentencing notes of Judge Mathers also provide a useful insight. The sentencing remarks make it clear that the Court considered the offending serious but also acknowledged Dr Quistorff's genuine remorse and a hope for his rehabilitation. Judge Mathers noted at [2] to [9] and [14]:

“[2] Between April and November 2011, you wrote and signed 37 Auckland District Health Board medical certificates for 12 language students. These certificates declared the students unfit for work and excused their attendance from their studies. Thirty-two of these certificates were presented by those students studying at Language International and five by students studying at Unitec.

[3] These certificates, as I have said, excused attendance by the students at their studies. To be excused, a doctor or nurse practitioner had to certify accordingly. This allowed the students who had not been examined to avoid lectures. The immigration legislation provides a minimum level of attendance. Only a medical certificate will excuse attendance. None of the 37 students ever attended the adult emergency department of the Auckland City Hospital, therefore the false certificates interfered with the legislative requirement for the minimum attendance of the students. Those certificates were issued by you but at some stage you obviously became aware of your vulnerability and therefore you used another doctor’s name. This exacerbated your actions.

[4] I have seen the victim impact report which has been provided by Ms Mack. As a result of your actions, you put the reputation of the Auckland District Health Board at jeopardy and you also increased their workload and placed significant strain on them as a result of your actions when they had to investigate the circumstances surrounding your offending.

[5] In sentencing you today I am fortunate that both the Crown and defence submissions acknowledge a starting point of 12 month’s imprisonment. I am advising you at this stage that I do not intend to impose a sentence of imprisonment. You have been extremely foolish and I am heartened by the pre-sentence report, your letter to me, and your counsel’s submissions that you accept entirely your stupidity.

[6] I am prepared to accept that in the first instance you did not appreciate any criminality as such but by the time you used another doctor’s name I am

sure that you appreciated the seriousness of the course of your actions that you had embarked upon.

[7] Your financial reward was trivial and your exposure to the consequences of your offending was, as it turns out, immense. Having read the pre-sentence report, and the various letters in your support, I do accept your remorse and the consequences to you of your offending which to you, putting aside any sentence I impose, are as I have said immense.

[8] You are 33 years old, you have no previous convictions and I take into account your previous good character. You came to New Zealand some 11 years ago and you completed your medical qualifications. I accept that you have practised with a considerable degree of care and empathy for your patients. It is a tragedy that your foolishness has put at risk your career by exposing yourself to the appropriate considerations of the Medical Council.

[9] It appears from your letters of support that you are a very caring doctor with a high degree of competence. I accept also that you now accept completely and with genuine remorse your absolute foolishness. A well-known Chief Magistrate, Sir Desmond Sullivan, once said that everyone is entitled to one chance and having presided over your trial, and having considered the overall circumstances of your offending and in the exercise of my discretion, I am going to give you that chance.

...

[14] In conclusion, Dr Quistorff, I hope you will appreciate the chance that I am giving to you and I sincerely hope the Medical Council will understand my underlying reasons and I hope without, in any way influencing their decision, that you will be rehabilitated and you will be given the opportunity to serve the community as a fully qualified doctor in due course."

Charge 2 – Practising without a Practising Certificate

17. Dr Quistorff first met Dr I in April 2013. At that time, Dr Quistorff did not have an annual practising certificate as he was awaiting trial on the Crimes Act

charge so he could not work as a doctor. He obtained part time secretarial work as an office administrator for a pediatrician. The pediatrician was aware of the registration status of Dr Quistorff and that he was facing criminal charges. She introduced Dr Quistorff to Dr I as “Dr Quistorff”.

18. Dr Quistorff believed that Dr I was aware that he had been suspended and was facing criminal charges, as there had been widespread publicity following his arrest. He now accepts that Dr I was unaware that he did not hold a current practising certificate or was facing criminal charges, until after he was convicted of the offences.
19. Dr Quistorff was keen to do all he lawfully could to keep his skills and knowledge current while he was suspended. He arranged to sit in with doctors to observe their practice. Dr I was a practitioner that Dr Quistorff held in very high esteem and so asked to be able to observe him with patients. This was agreed to by Dr I.

First patient referral- Ms G

20. In May 2013, Dr Quistorff asked Dr I to see a friend of his, Ms G. Dr I asked for a referral. Ms G’s General Practitioner declined to write a referral.
21. Dr Quistorff sent Dr I a letter dated 13 May 2013 referring Ms G to him. This letter was addressed from “Dr Daniel Quistorff, Psoriasis & Skin Clinic” and it read:

“Dear Dr I,

I would like to refer this lovely lady to your service. Please note, I am not her GP, but I have been asked to write the referral as her current GP was unwilling to do so. She would very much like to see you. She does not wish for her GP to be notified of your consultation with her. So I apologise in advance for the brevity of this letter.

Two years ago she started noticing pain in the 1st MTP of both feet. There was no traumatic insult which I can attribute to this. However, she live next door to [], so she is frequently walking up and down hill with heavy objects. This

foot pain was associated with swelling and burning sensation in the affected areas. When there is a flare up the affected joints become very sensitive to touch. The pain eventually settles, but can often spontaneously flare up. She has been taking glucosamine for 2 months with no help. She is currently in flare-up.

I have advised her that this is likely gout, but she would like a second opinion with holistic treatment options, including advice on footwear, diet, and supplements. She may also wish to discuss her dyslipidemia with you, if time permits.

Her current medical problems include:

- *Dyslipdemia*
- *Peri menopausal*
- *Several amalgam fillings*

She is currently taking:

- *Progesterone 200mg OD*
- *Bi-Est Cream*
- *Secretopin*
- *Synthroid 0.05mg OD*
- *DHEA 15mg OD*
- *Zinc Sustain*
- *Magnesium*
- *Glucosamine 1,500mg OD*
- *Omega 3*
- *Currently taking part in a Vitamin D study 1.25 mg monthly (she could be on placebo)*

I thank you again for your help. And I reiterate that she does not want her GP notified of this visit.

Kindest Regards,

Daniel

22. Dr I saw the patient and later responded by letter on 9 July 2013, with his report on the patient. He responded to “Dr Quistorff” at the Psoriasis & Skin Clinic. The practitioner had started working at the Psoriasis and Skin Clinic in 2012 as an administrative assistant. He worked casual hours as required, undertaking various administrative tasks, providing handouts and selling supplements. Dr Quistorff has never worked as a doctor at the Psoriasis Skin Clinic.
23. Ms G first met Dr Quistorff in 2008, when he began a relationship with Ms G’s daughter. Dr Quistorff began living with the G family in early x. At the time relevant to this charge, Ms G was aware that Dr Quistorff did not have a practising certificate. She mentioned her health concerns to him. She did not have a consultation with Dr Quistorff, but had asked if he knew anyone who could help with her foot. Dr Quistorff recommended Dr I. Ms G is not a patient of the Psoriasis and Skin Clinic.
24. Dr Quistorff was employed by the Living Proof Clinic as a locum doctor from April 2011 until his license was suspended in December 2011. The Living Proof Clinic and the Psoriasis and Skin Clinic (“the clinics”) share premises, staff and office equipment.

Second patient referral – Ms N

25. Dr Quistorff and Ms N had been []. Ms N was aware that Dr Quistorff did not have a current practising certificate when he referred her to Dr I. She queried with Dr Quistorff whether she should get a referral from her General Practitioner. Dr Quistorff told her that it would be fine and she would be seen more quickly if he referred her. Dr Quistorff’s belief was that Dr I accepted referrals other than just from doctors.

26. On 15 January 2014, Dr Quistorff sent an email to the clinics asking them to fax a referral to Dr I as set out in the email. He did so because he could not access a fax machine at the time.
27. In the referral letter, dated 15 January 2014, which was on Living Proof Clinic letterhead, Dr Quistorff set out Ms N's medical history, current medications and presenting complaint as "*Migraines – likely induced by C4/C5 subluxation post MVC*". Dr Quistorff also provided a suggested reason for her migraines. Ms N was not a patient of the Living Proof Clinic and had only visited the clinic in a social context to meet up with Dr Quistorff.
28. Dr I reported back to Dr Quistorff at the Living Proof Clinic by letters dated 20 January and 18 February 2014. Following publicity about Dr Quistorff's conviction in the District Court in April 2014, Dr I wrote to the Medical Council to report his concerns about Dr Quistorff not disclosing to him that he did not hold a practising certificate or the pending charges. Dr I noted in his letter that he had sent letters to all his patients who had attended his clinic on the four days that Dr Quistorff had been present in training at his clinic. Dr I also reported his concern about the two patient referrals he had received from Dr Quistorff.

The relevant law

29. The practitioner is charged under s100(1)(c) and s100(1)(d) of the HPCA 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 s91 against a health practitioner, it makes 1 or more findings that –

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

(d) the practitioner has practiced his or her profession while not holding a current practicing certificate.

30. The role of the Tribunal is to conduct an objective analysis of the charge measured against the standards of responsible professional peers taking into account patient interests and community expectations.
31. The Tribunal is mindful of the direction provided in the judgment of Elias J. on page 15 in *B v Medical Council of New Zealand*: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 practice 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.”

Charge 1 – s100(1)(c) of the Act

32. There are two elements of the charge that must be established under s100(1)(c) of the Act, namely that:
- (a) Dr Quistorff was convicted of the offence as charged under the Crimes Act 1961; and
 - (b) The offence reflects adversely on his fitness to practise as a registered health practitioner.
33. It is further noted that the Tribunal may only make a finding under s100(1)(c) of the Act if the conviction concerned has been entered by any court for an offence punishable by imprisonment for a term of 3 months or longer.³

² Noted in [2005] 3 NZLR 810

³ Section 100(2)(b) of the HPCA Act.

34. Not all convictions will reflect adversely on a practitioner's fitness to practise. This is evident given the threshold requirement of an offence punishable by at least 3 months imprisonment as set out in the Act. It is also not automatic that a conviction punishable by 3 months imprisonment or more will always reflect adversely on the practitioner's fitness to practise.
35. This Tribunal and the Courts have previously considered the meaning of "fitness to practise" under s100(1)(c) of the Act, in relation to other practitioner conviction charges.⁴ It is clear from this body of case law, that conduct which offends the law will usually be regarded as adversely affecting the practitioner's fitness to practise. This is certainly the case in relation to any conviction for a dishonesty offence. "Fitness to practise" in the context of a conviction is not restricted to consideration of the practitioner's clinical ability. It involves a wider consideration of whether the practitioner's conviction reflects adversely on their overall fitness to practise, because the conduct leading to the conviction was either immoral, unethical or otherwise failed to uphold the law.
36. In *Murdoch*,⁵ the Tribunal has previously stated [at para 34]:
- "Fitness to practice cannot, in the context of a conviction, relate only to the practitioner's clinical ability. It must also involve a moral consideration and conduct which offends the law or is immoral or unethical, must affect adversely on the practitioner's fitness to practice. 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 practitioners' fitness to practice."*
37. The fact that the conviction related to dishonest conduct outside of the work setting does not materially impact the Tribunal's consideration of the immoral,

⁴ *Winefield* (60Phar06/30P), *Dalley* (MPDT decision 8/97/4C), *PCC v Martin*, Gendall J HC, CIV 2006-485-1461 (27/02/07), *Pellowe* (137/Phar07/74P); *Pollock*, 95/Nur06/38P

⁵ 76/Phys 06/45P

unethical and illegal nature of the conduct or prevent an adverse finding under s100(1)(c) of the Act.⁶

Charge 2 – Section 100(1)(d)

38. There are three elements of this charge that must be established under s100(1)(d) of the HPCA Act, namely that:

(c) the practitioner was a registered medical practitioner during the dates set out in the charge;

(d) the practitioner practiced as a health practitioner during the same dates; and

(e) the practitioner did not hold a current practising certificate during those dates.

39. It is well recognised by the Tribunal that a charge under s100(1)(d) of the HPCA Act does not require any element of knowledge or intention on the part of the practitioner. The offence of practising without a current practising certificate is an absolute offence in this sense. It does not require any deliberate intention to flout professional obligations or even that the practitioner knew or ought to have known that he did not have a current annual practising certificate (APC).⁷

Onus and standard of proof

40. The onus of proof is on the PCC to establish that Dr. Quistorff is guilty of the charge and to provide evidence that establishes the facts on which the charge is based.

41. The standard of proof in professional disciplinary cases before this Tribunal is a civil standard of proof; namely that the charge is proved to the satisfaction of the Tribunal on the balance of probabilities. However, the degree of satisfaction called for will increase according to the gravity of the allegations.

⁶ *Condon 23/Nur 05/13P*

⁷ *Dr E (503/Den/12/219P)* at [76], *White (366/Opt10/168P)* at [9], *Henderson (477/Phar12/210P and Phar12/213P)* at [36], and *Ms H (256/Psy09/128P)* at [6] and [7] and *Bhatia (344/Med10/151P)* at [74].

The Tribunal accepts and adopts the restatement of the civil standard to be applied in disciplinary proceedings, as approved by the Supreme Court in New Zealand.⁸

Consideration of the Charges

First Charge - Conviction

42. Dr Quistorff does not dispute the existence of the conviction. Nevertheless, the Tribunal must still satisfy itself as to the two elements of the charge.
43. The conviction is clearly established on the basis of the Notice of Conviction issued by the District Court at Auckland.⁹ This notice confirms the practitioner's conviction in the District Court at Auckland on 3rd April 2014, for making a false document being an offence under s256(2) of the Crimes Act 1961. The sentencing notes of Mathers DCJ dated 3 July 2014, also confirm the conviction and sentence imposed.
44. The Tribunal is satisfied that the offence is punishable under the Crimes Act 1961 by a term of imprisonment of 3 months or longer, as required under s100(2)(b) of the HPCA Act.¹⁰
45. The Tribunal is also satisfied that the offence does reflect adversely on Dr Quistorff's fitness to practise. The offence reflects adversely on the practitioner's professional obligation to act ethically, honestly and lawfully. In making the false medical certificates Dr Quistorff has failed to act in accordance with the standards of professional conduct expected of the medical profession. It is significant that this dishonest conduct was in the course of his clinical work as a medical professional. Creating these false documents and providing them to patients to be used to evidence of sickness involves a serious lack of judgment that must inevitably reflect adversely on his fitness to practise as a medical practitioner.

⁸ *Z v Complaints Assessment Committee* [2009] 1 NZLR 1 and applied in *Karagiannis* (181/Phar08/91P)

⁹ Notice of Conviction, CRI 2012-004-003051.

¹⁰ The conviction for an offence under s256(2), Crimes Act 1961, is an offence punishable by a term of imprisonment not exceeding three years.

46. The first charge as laid against the practitioner under s100(1)(c) of the HPCA Act is established.

Second Charge – Practising without a practising certificate

47. The Tribunal is also satisfied that the three elements of this charge, laid under s100(1)(d) of the HPCA Act, are established. In particular:
- (a) Dr Quistorff was at all relevant times during May 2013 and January 2014, a registered medical practitioner. This is established by the Medical Council Registration Summary produced to the Tribunal;
 - (b) On both 13 May 2013 and 15 January 2014, Dr Quistorff sent referral letters to Dr I for the two patients Ms G and Ms N respectively. These referral letters contained medical information about the patients and a form of medical assessment by Dr Quistorff, that amounted to acting within the scope of practise as a registered medical practitioner ; and
 - (c) That during the period of the charge, Dr Quistorff did not hold a current practising certificate. He had not held an annual practising certificate since February 2012.

PENALTY

48. The Tribunal, once satisfied that the charges are established must go on to consider what penalty is appropriate under s101 of the HPCA Act.
49. The Tribunal adopts the sentencing principles as contained in *Roberts v Professional Conduct Committee*¹¹ in which Collins J identified the following eight factors as relevant whenever the 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;
 - (b) facilitates the Tribunal’s important role in setting professional standards;
 - (c) punishes the practitioner;
 - (d) allows for the rehabilitation of the health practitioner;

¹¹ [2012] NZHC 3354 at [44]-[51]

- (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.*”

50. We have also taken into account and adopted, the recent appeal decision of the High Court, *Singh v Director of Proceedings*,¹² in which Ellis J stated at [57]:

“On my own reading of Roberts, Collins J did not say that punishment was a necessary focus of the disciplinary penalty exercise. Rather he merely accepted (as I have above) that punishment may be an incident of such an exercise and acknowledged that a decision by the Tribunal to impose a fine appears, necessarily, to be punishment-oriented.”

And at [62] she concluded on this point:

“In terms of the general approach to be taken and principles to be applied, it also seems clear to me that care must be taken not to analogise too far with the criminal sentencing process. As the Supreme Court noted in Z, the relevant societal interests at play in each case are different. In cases where deregistration is on the table I consider that the proper approach continues to be that articulated in Patel v Dentists Disciplinary Tribunal. In that decision, Randerson J said that:

... the task of the Tribunal is to balance the nature and gravity of the offences and their bearing on the [practitioner’s] fitness to practice against the need for removal and its consequences to the individual: Dad v General Dental Council at 1543. As the Privy Council further observed [in Dad]:

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 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 consequence of the imposition of the penalty to the individual.”

Penalty submissions for the PCC

51. The PCC submitted that the following penalties should be imposed:
- (a) Suspension of the practitioners registrations as a medical practitioner;
 - (b) Conditions to be imposed on his resuming practice for a period of 18 months including;
 - i. Advise to future employers of the Tribunal decision;
 - ii. No management or financial interest in any medical practice;
 - iii. Not practice as a sole practitioner;
 - iv. Establish a mentoring relationship with an appropriate medical practitioner approved by the Medical Council.
 - (c) Censure;
 - (d) Costs
52. The PCC submitted that there were a number of aggravating features to this case that make it appropriate to adopt the penalties sought. These features are submitted to be:
- (a) that the conviction for dishonesty was inherently serious as noted by Judge Mathers. The sentence had a starting point of imprisonment and was only reduced to a community based sentence due to the practitioner’s remorse, the impact on his career and lack of any previous convictions;
 - (b) The offending spanned an eight month period and 37 separate occasions of creating false medical certificates;

¹² [2014] NZHC 2848

- (c) Dr Quistorff had used the name of another medical practitioner on some of the later certificates, to avoid being discovered;
 - (d) The practitioner's actions damaged the reputation of his employer the ADHB, the language schools, Dr I and the profession generally.
53. The PCC did acknowledge mitigating features relating to both the offending and the practitioner, as being:
- (a) Dr Quistorff is still a relatively junior doctor at the beginning of his career who has no prior convictions or disciplinary record before the PCC or Tribunal;
 - (b) he has co-operated throughout the PCC investigation and admitted the charges before the Tribunal;
 - (c) He has expressed remorse for his actions and shown insight into his offending;
 - (d) The practitioner has already undertaken a lengthy period of community work and supervision as a result of his conviction in the District Court. He has already been unable to practise for some 3 and a half years while awaiting the determination of the District Court charges;

Penalty submissions for the practitioner

54. Dr Quistorff elected to give sworn evidence to the Tribunal. He also produced to the Tribunal a written statement setting out his background, the personal circumstances that he believes led him to issue the medical certificates and the counselling he has undertaken since. Dr Quistorff apologised for his conduct and set out the plans he had for the future including wanting to undertake a General Practitioner fellowship and undertake post –graduate study in ethics and bioethics.
55. Dr Quistorff also provided a detailed disclosure of his financial situation, including the substantial student loan he has from his time studying in the United States.

56. He also produced a number of positive references including from Mr and Mrs G, seven medical practitioners who know him, the Salvation Army where he conducted his community service and the clinics where he has worked.
57. Counsel for the practitioner made the following submissions in relation to penalty:
- (a) Dr Quistorff has already suffered a considerable penalty; being the effective suspension of three and a half years and the publicity his District Court case attracted in the media;
 - (b) In relation to the referral letters sent by Dr Quistorff, this was a limited breach as there was no suggestion he had anything to gain from this conduct or that he attempted to treat these patients himself;
 - (c) Dr Quistorff does not pose a risk to the public and this was the view of the District Court Judge who presided over his trial and sentencing;
 - (d) He has been co-operative, contrite and remorseful and the time he has spent not practising has given him the opportunity to reflect and rehabilitate himself as acknowledged in his references.
58. Counsel for Dr Quistorff submitted that any further period of suspension would be unwarranted and that the least restrictive penalty overall supports an outcome that will permit him to practise again. Counsel accepted that conditions are likely to be ordered by the Tribunal and acknowledged Dr Quistorff would accept the conditions as sought by the PCC. Counsel for the practitioner also accepted that some order of the Tribunal would be made against the practitioner in relation to costs.

Comparative cases on penalty

59. The Tribunal was referred to a number of previous penalty cases for the purposes of considering a comparative penalty. We have been mindful that the second charge is not as serious as the first charge and have considered them separately and cumulatively, when considering comparative cases.

60. There are a large number of potentially relevant case. We have set out below the cases that are relevant to the present case while also providing a range of more serious and less serious cases:

Charge 1 - Conviction

- (a) Adams¹³ - Dr Adams pleaded guilty to one criminal charge of attempting to obtain a pecuniary advantage of \$4,500 by a false travel insurance claim. He was convicted and discharged by the Court. The Tribunal ordered censure, two months suspension and conditions on return to practise together with 25% of the costs;
- (b) Condon¹⁴ - Ms Condon was a nurse convicted of taking a work colleagues credit card and using it on 10 occasions to defraud a total of \$1,222. She was sentenced to 300 hours community work and reparation. She did not appear before the Tribunal and her registration was cancelled with an order to pay 40% of the costs of the hearing.
- (c) Dr E¹⁵ - The practitioner was convicted of forging signatures on prescriptions to obtain medicines. She was suspended for three months, censured and conditions were imposed.
- (d) Singh¹⁶ - Ms Singh was a registered nurse found guilty of professional misconduct after forging a prescription and obtaining the medication for herself. She was suspended for six months with conditions imposed on her return.
- (e) Dr Jayaprakash¹⁷ - He was charged with two dishonesty offences for having submitted a false CV to the ADHB and then forging a letter from the College of Anesthetists to support his false CV. He had placed

¹³ Adams 631/Med13/270P

¹⁴ Condon 23/Nur05/13P

¹⁵ E 345/Med10/155P

¹⁶ Singh 385/Nur10/163P

¹⁷ Dr Jayaprakash 327/Med10/153P

patients at risk and did so for personal financial gain. He was suspended for six months, censured and fined.

- (f) Winefield v PCC¹⁸ - Mr Winfield was a pharmacist who pleaded guilty to 22 charges of fraud relating to claims made over 3 years to a value of \$10,800. He was sentenced by the Court to 200 hours community service. The Tribunal suspended him for a period of nine months and this decision was upheld on appeal.

Charge 2 – practising without a practising certificate

61. In the main, Tribunal penalties on practising without a practising certificate have resulted in a censure, fine and costs, particularly where the offending has been inadvertent and over a relatively short period.¹⁹
62. The Tribunal must ultimately tailor the penalty required to the individual case before it, though mindful of the need to ensure some consistency with previous cases.

Tribunal consideration of penalty

63. The Tribunal largely accepts the submissions of both counsel as to the aggravating and mitigating features.
64. We consider the first charge is certainly the most serious of the charges. It relates to a dishonesty offence that is always inherently serious for a medical professional. The false medical certificates on 37 occasions over eight months cannot be excused as a one off lapse of judgment. It is also concerning to us that when the practitioner realised that the false medical certificates might be traced to him, he used the name of another practitioner to attempt to cover his own involvement. This does constitute a sustained and determined dishonesty. It inevitably impacted on others including the ADHB, the language schools and the doctor whose name he used on the certificates. It did also involve a

¹⁸ Winefield v PCC Wellington HC CIV 2006-485-2225

¹⁹ Mason 465/Mid12/204P and Devine 555/Dtech13/232P

financial gain being the \$60 fee per certificate for 37 certificates, which resulted in some \$2,000 benefit to Dr Quistorff.

65. Against this, we acknowledge that considerable mitigating features in Dr Quistorff's favour. He is a first time offender and has now accepted his errors.
66. We also acknowledge the very real penalty he has already paid before the Court, financially, his prolonged suspension awaiting trial and the distress he has suffered as a result of the publicity his Court case attracted.
67. The Tribunal has also assessed the sentencing principles. We have determined that it is appropriate to impose the following penalties which together are the least restrictive and proportionate penalty overall:
 - (a) A censure; and
 - (b) Conditions to be imposed on Mr Quistorff's practice for a period of three years after he resumes practise as set out in the final page of this decision.
68. The Tribunal does not consider it necessary to impose a further period of suspension, given that there is no current risk to public safety posed by the practitioner and no need to impose a further suspension to maintain professional standards in this case. We would otherwise have considered this case warranted a suspension of six months in relation to first charge. In relation to the second charge suspension is not warranted in this case.
69. The conditions to be imposed on Dr Quistorff's return to practice, are ordered to be for a period of three years from the date he resumes practise. The Tribunal considers this is necessary to safe guard the public safety by ensuring that Dr Quistorff remains in a work environment where he is supported appropriately for a sustained period of time. The Tribunal remains concerned that Dr Quistorff has displayed behaviour both in relation to the false medical certificates and the letters of referral, that display a pattern of lacking judgment in a clinical setting. We therefore consider it necessary to impose the conditions for the full period of three years to ensure that he is supported to

ensure a full rehabilitation before he progresses to any sole practice or management roles within the medical profession.

70. We also recommend that the practitioner apply for a vocational training programme within 12 months of regaining his Annual Practising Certificate. We make this recommendation on the basis that we consider it will assist the practitioner if he remains appropriately supervised within a vocational programme, if this is possible.

Costs

71. The Tribunal's costs and disbursements incurred up to and including the date of hearing are estimated at \$18,568. The PCC investigation and legal costs claimed amount to \$15,713.
72. While the starting point for any award of costs is generally recognised as 50% of the total costs to be paid by the practitioner, a further discount is appropriate to reflect the practitioner's co-operation and his poor financial position. We order that he pay 35% of the total costs of the Tribunal and the PCC. It is appropriate that the practitioner contribute to payment of the costs incurred were charges are established.

Orders of the Tribunal

73. The Orders of the Tribunal are as follows:
- (a) The first charge, that the practitioner has been convicted of an offence that reflects adversely on his fitness to practise, is established under s100(1)(c) of the HPCA Act 2003;
 - (b) The second charge, that the practitioner has practiced his profession while not holding a current practising certificate, is established under s100(1)(d) of the HPCA Act 2003.
 - (c) The practitioner is censured to mark the disapproval of his conduct by the Tribunal.
 - (d) The Tribunal does not consider it appropriate to order any further suspension of the practitioner, in the particular circumstances and noting

the practitioner's voluntary suspension from practice since December 2011 when the criminal charges were first laid. However, the Tribunal notes that the charges established would otherwise together warrant an order that the registration of the health practitioner be suspended for a period six months.

- (e) The practitioner may, after commencing practice following the date of this decision, for a period of three years, practise his profession only in accordance with the following conditions ordered under s 101(1)(c) of the Act, namely;
 - i. The practitioner must advise any employer or any medical practice he is employed or engaged to work for, of this decision and the conditions imposed on his practise;
 - ii. The practitioner must not have any ownership, management role or financial interest in the operation of any medical practice;
 - iii. The practitioner is not to practise as a sole medical practitioner;
 - iv. The practitioner must practise as a health practitioner under the regular supervision of a supervisor as approved by the New Zealand Medical Council. The costs of supervision will be at the practitioner's cost;
 - v. The practitioner is only to be employed by a medical practitioner or within a medical practice as approved by the Royal New Zealand College of General Practitioners as a suitable training practice.
- (f) The practitioner is ordered to pay 30% of the costs of the Tribunal and the PCC, being \$5,570 to the Tribunal and \$4,713 to the PCC.
- (g) Permanent suppression orders are made prohibiting the publication of the name and any identifying features of the following non-parties and patients:
 - i. Dr I;
 - ii. Dr Y;

iii. Ms G; and

iv. Ms N.

- (h) The Tribunal directs the Executive Officer to publish a copy of this decision on the Tribunal's website, together with a summary. It further directs that the Executive Officer publish a notice stating the effect of the Tribunal's decision on the website of the Medical Council of New Zealand and its magazine.

DATED at Auckland this 27th day of July 2015

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MJ Dew, Chairperson

Health Practitioners Disciplinary Tribunal