

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Health Ombudsman v Mullins* [2019] QCAT 339

PARTIES: **HEALTH OMBUDSMAN**
(applicant)

v

SIAN LOUISE MULLINS
(respondent)

APPLICATION NO/S: OCR027-19

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 30 October 2019 (*ex tempore*)

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Judge Allen QC, Deputy President

Assisted by:
Ms A Bains
Dr K Forrester
Dr A Tuckett

- ORDERS:
- 1. Pursuant to section 107(2)(b)(iii) of the *Health Ombudsman Act 2013 (Qld)*, the Tribunal decides that the respondent has behaved in a way that constitutes professional misconduct;**
 - 2. Pursuant to section 107(3)(a) of the *Health Ombudsman Act 2013 (Qld)*, the respondent is reprimanded; and**
 - 3. Each party must bear the party's own costs for the proceeding.**

CATCHWORDS: PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – NURSES – DISCIPLINARY PROCEEDINGS – where the applicant instituted disciplinary proceedings against the respondent in relation to conduct that involved the respondent stealing pre-authorised prescription sheets from her employer, and using them to obtain medications – where the respondent was convicted of stealing, fraud and forgery and uttering in relation to the conduct – where at the time of the conduct the respondent was suffering a substance use disorder involving opiates that arose in the context of a long history of physical health problems - where the

respondent self-notified to the Office of the Health Ombudsman and is remorseful – where the respondent has demonstrated insight and has sought and received ongoing treatment – where the respondent’s registration is subject to conditions - where the parties agree as to the facts – where the parties agree as to the sanction – whether the sanction proposed is appropriate

Health Ombudsman Act 2013 (Qld), s 103, s 104, s 107
Health Practitioner Regulation National Law (Queensland), s 5

REPRESENTATION:

Applicant: The Director of Proceedings, on behalf of the Health Ombudsman

Respondent: Self-represented

APPEARANCES: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*

REASONS FOR DECISION

- [1] The Director of Proceedings on behalf of the Health Ombudsman (“the applicant”), has referred a health service complaint against Sian Louise Mullins (“the respondent”) to the Tribunal pursuant to sections 103(1)(a) and 104 of the *Health Ombudsman Act 2013 (“HO Act”)*. The applicant seeks a finding that the respondent has behaved in a way that constitutes professional misconduct and consequent orders for sanction.
- [2] The parties are agreed as to the facts of the matter, including the facts of the conduct, its characterisation as professional misconduct, and jointly submit that an appropriate order for sanction is one of a reprimand.
- [3] The respondent is 30 years of age, born on [redacted], and was aged 27 years at the time of the conduct. The respondent first obtained registration as a registered nurse on 28 December 2011. From August 2014, the respondent was employed as a registered nurse in the emergency department of a South East Queensland public hospital (“the Hospital”). The respondent has a long history of physical health problems. In the aftermath of a failed trial of new medications for one of her physical health problems, she became increasingly despondent and depressed. She had a fall, fractured her wrist and was prescribed oxycodone. The respondent found that the oxycodone had a positive psychotropic effect on her depression and consequently began to abuse oxycodone and developed a substance use disorder involving opiates.
- [4] Sometime before 21 November 2016, the respondent stole a number of pre-authorised prescription sheets from the Hospital. During the period from 21 November 2016 to 27 December 2016, the respondent obtained medications by presentation of forged prescriptions to pharmacists. She obtained a total of 240 5mg

tablets of oxycodone, 20 tablets of paracetamol/codeine, fentanyl patches and a quantity of propranolol hydrochloride.

- [5] The respondent's conduct came to light when some concerned pharmacists made inquiries of the ostensible prescribing doctors at the Hospital and contacted the Queensland Police Service on 28 December 2016. The respondent was suspended from her employment at the Hospital on the same day. On 31 December 2016, the respondent was charged with criminal offences relating to the obtaining of medication by the forged prescriptions. On 17 May 2017, the respondent appeared in the Beenleigh Magistrates Court and pleaded guilty to offences of stealing, fraud and forgery and uttering, constituted by her conduct in obtaining medications by way of the forged prescriptions stolen from her employer. She was placed on a six month probation order with no conviction recorded.
- [6] The respondent had self-notified to the Office of the Health Ombudsman on 3 January 2017, and the Office of the Health Ombudsman in turn referred the respondent's self-notification to the Australian Health Practitioners Regulation Agency ("AHPRA") on 4 January 2017. The matter of the respondent's impairment has subsequently been managed by AHPRA by way of conditions placed upon the respondent's registration, informed by health assessments. The respondent's registration is currently subject to conditions that she must not practise as a nurse until she has received approval to do so from the Nursing and Midwifery Board upon evidence of three months of clean urine and hair drug screening and positive reports from her treating practitioners addressing her fitness to practise. The respondent has not practised as a nurse since her suspension from employment on 28 December 2016.
- [7] Subsequent to her suspension, the respondent has sought appropriate treatment through referral to a psychiatrist, psychologist and an addiction medicine specialist. Consistent with her early self-notification, the respondent has demonstrated insight and remorse into her conduct by initially giving undertakings to the Board to cease practice until given approval to do so, by pleading guilty in the criminal proceedings, making full and frank admissions to her conduct, cooperating with the investigation conducted by the Office of the Health Ombudsman, expressing her remorse and shame for her actions and complying with conditions imposed upon her registration.
- [8] In determining an appropriate order for sanction, the Tribunal takes into account that the respondent had no prior notifications, was dismissed by her employer as a result of her conduct, has not practised in a clinical role since her conduct and has been compliant with the conditions imposed on her registration.
- [9] The parties have jointly submitted that the respondent's conduct should be characterised as professional misconduct within the meaning of that term as defined in section 5 of the *Health Practitioner Regulation National Law (Queensland)*.
- [10] The respondent's conduct was a serious departure from the professional standards expected of nurses and the Tribunal does find that the respondent has behaved in a way that constitutes professional misconduct.
- [11] As indicated earlier, the parties both submit that the appropriate sanction is a reprimand. They submit that a period of suspension is not necessary to protect public health and safety in this case, having regard to the conditions currently

attaching to the respondent's registration. Further, the respondent has demonstrated and continues to demonstrate a significant level of insight into her conduct, health impairment, her commitment to further treatment and the underlying mental health and external stressors that contributed to her conduct. It is submitted that conditions are not necessary in this case, as the conditions currently attaching to the respondent's registration will remain in place until the respondent has satisfied the Board that her impairment has been resolved, and she has been independently assessed as fit to return to practice.

- [12] In determining an appropriate sanction for the respondent's misconduct, the health and safety of the public are paramount. The purpose of the disciplinary proceedings and any sanction imposed is protective, not punitive. A reprimand is not a trivial penalty and has the potential for serious adverse implications to a professional person. A reprimand is a matter of public record, affecting the reputation of a practitioner.
- [13] The respondent's misconduct was a serious breach of professional and legal obligations. It involved a gross breach of the trust expected of her by the public and her employer. The respondent's conduct deserves denunciation by the Tribunal.
- [14] The determination of sanction remains a discretionary matter for the Tribunal, notwithstanding any agreement between the parties. However, the Tribunal ought not depart from a proposed sanction agreed between the parties unless it falls outside a permissible range of sanction. The Tribunal accepts that a reprimand is the appropriate order by way of sanction in this matter.
- [15] Both parties have submitted that each party should bear their own costs of the proceedings.
- [16] Accordingly, it is ordered:
1. Pursuant to section 107(2)(b)(iii) of the *Health Ombudsman Act 2013* (Qld), the Tribunal decides that the respondent has behaved in a way that constitutes professional misconduct;
 2. Pursuant to section 107(3)(a) of the *Health Ombudsman Act 2013* (Qld), the respondent is reprimanded; and
 3. Each party must bear the party's own costs for the proceeding.