

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Health Ombudsman v Wrede* [2019] QCAT 356

PARTIES: **HEALTH OMBUDSMAN**
(applicant)

v

JANKA WREDE
(respondent)

APPLICATION NO/S: OCR004-19

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 4 November 2019 (*ex tempore*)

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Judge Allen QC, Deputy President

Assisted by:
Dr J Cavanagh
Dr T Jacobson
Mr P Zimon

- ORDERS:
- 1. Pursuant to section 107(2)(b)(iii) of the *Health Ombudsman Act 2019 (Qld)*, the Tribunal finds that the respondent has behaved in a way that constitutes professional misconduct;**
 - 2. Pursuant to section 107(3)(a) of the *Health Ombudsman Act 2019 (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 PRACTITIONERS – MEDICAL PRACTITIONERS – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT – where the applicant instituted disciplinary proceedings against the respondent - where the disciplinary proceedings relate to the respondent being convicted on her own pleas of guilty to one count of forgery and uttering and one count of uttering a forged document – where the criminal conduct involved the respondent forging prescriptions for dexamphetamine and Vyvanse and obtaining the medications for her own use – where the respondent's conduct occurred in circumstances

where she had experienced health difficulties for some years prior to the conduct, and during a period in which she was facing challenging circumstances in both her personal and professional life – where the respondent has demonstrated insight and remorse – where the respondent has sought and continued treatment for her health issues – where the parties agree as to the characterisation of the conduct as professional misconduct – where the parties agree as to the appropriate sanction – whether the proposed sanction 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: Fisher Dore Lawyers

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 these disciplinary proceedings against Janka Wrede (“the respondent”) to this Tribunal pursuant to sections 103(1) and 104 of the *Health Ombudsman Act 2013 (Qld)* (“*HO Act*”). The parties are agreed as to the facts of the matter, including the facts that are alleged to constitute the conduct of the respondent, its characterisation as professional misconduct and that an appropriate order for sanction is that the respondent be reprimanded.
- [2] The respondent is 40 years old, born on [redacted] in Slovakia. She first obtained her medical qualifications in Slovakia. The respondent was first granted limited registration as a medical practitioner in Australia in September 2007. She attained specialist registration as a paediatrician in 2013.
- [3] At the time of the conduct, the respondent was employed both in private practice as a paediatrician and in employment as a paediatrician in a southeast Queensland public hospital. The respondent had a history of health difficulties for which she had been receiving treatment for some years prior to and during the time of the conduct. In the two years leading up to the conduct, the respondent had experienced particularly challenging family and social circumstances and health episodes. She also experienced great challenges in her workplaces with heightened anxiety, attempting to balance the demands of multiple workplaces, physical exhaustion and feelings of being overwhelmed. By about February 2017, the respondent was having difficulty waking up and getting out of bed and functioning. The respondent began to self-medicate with the stimulant drugs dexamphetamine and Vyvanse. She

did this by means which constitute the conduct which has led to her referral to this Tribunal.

- [4] The conduct comprised the respondent forging four prescriptions, namely prescriptions for dexamphetamine and Vyvanse in the name of two child patients. The patients were not supplied with such prescriptions or medications. The prescriptions were used along with the repeat prescriptions by the respondent to obtain those stimulant drugs. The prescriptions and repeats were used by the respondent on a number of occasions between April and November 2017 until the respondent's conduct aroused the suspicions of a pharmacist who, after enquiring of the parents of one of the child patients, contacted police. The respondent was arrested by police at the pharmacy on 23 November 2017, attempting to collect medication. She was issued with a notice to appear in relation to charges of forgery and uttering. On 4 May 2018, the respondent appeared before the Southport Magistrates Court and pleaded guilty to one count of forgery and uttering and one count of uttering a forged document. The respondent was placed on a two year good behaviour bond with a recognisance in the amount of \$1,500 with no conviction recorded.
- [5] On 24 November 2017, the same day as being charged with the criminal offences, the respondent notified the relevant Hospital and Health Service of the charges and she was stood down from all duties. On the same date, the respondent informed her employer in her private practice of the charges and ceased seeing patients immediately. Since 24 November 2017, the respondent has not been employed in any capacity.
- [6] The matter of any impairment of the respondent was referred to the Australian Health Practitioners Regulation Agency and was managed by that agency up until the respondent, on 25 February 2019, applying for, and being granted non-practising registration.
- [7] The respondent admits that her conduct amounts to professional misconduct. The Tribunal readily accepts the submissions by both parties that the respondent's conduct should be characterised as professional misconduct as defined in section 5 of the *Health Practitioner Regulation National Law (Queensland)*.
- [8] With respect to sanction, the purpose of these proceedings is protective, rather than punitive. The health and safety of the public is the paramount consideration. Protection of the public includes protection from similar conduct by the respondent and other practitioners and upholding public confidence in the standards of the profession. Considerations as to whether the practitioner presents any ongoing risk will be critical. The degree of insight and evidence of rehabilitation on the part of a practitioner will be of importance.
- [9] The applicant submits that the respondent has demonstrated insight and remorse by her cooperation with the investigation into her conduct and making early and frank admissions. She has sought and continued with treatment for the health issues that contributed to her conduct. The respondent further submits that her significant insight is demonstrated by her prompt admissions to the criminal charges and the admission of the particulars alleged in the referral initiating these disciplinary proceedings. The respondent submits that the evidence of her seeking treatment

with respect to her medical condition shows an understanding on her part as to the personal deficits which led to the misconduct.

- [10] The applicant submits that an appropriate sanction is a reprimand and that a period of preclusion from practice is not necessary to protect public health and safety in this matter, having regard to the period of almost two years that the respondent has not practised as a paediatrician, the significant level of insight demonstrated by the respondent, and her commitment to further treatment addressing the underlying health issues and external stressors that contributed to her conduct.
- [11] The applicant further submits that conditions are also not necessary in this case where, if the respondent was to seek practicing registration in the future, she would need to overcome the Board's requirements in respect of recency of practice and demonstrate that she is a fit and proper person to hold registration in the profession and comply with any health assessment, monitoring and treatment that the Board may require as a condition of her re-registration.
- [12] The respondent agrees with those submissions.
- [13] Both parties submit that a formal reprimand is an appropriate order by way of sanction.
- [14] The determination of sanction remains a discretionary matter for the Tribunal, notwithstanding any agreement between the parties. Nevertheless, where parties have reached an agreed position that should only be departed from if it falls outside a permissible range of sanction for the conduct.
- [15] A reprimand is not a trivial sanction. It is a public denunciation of the conduct which is recorded on the public register of practitioners. It has the potential for serious adverse implications to a professional person. A finding of professional misconduct, together with a reprimand, amounts to a public denunciation.
- [16] The respondent's conduct was a substantial departure from the standard expected of a health practitioner of her level of training and experience. It deserves denunciation by the Tribunal. In all the circumstances, the Tribunal accepts that a reprimand is an appropriate order to satisfy the protective purposes of sanction in this matter and that, having regard to the mitigating circumstances of the case, a period of preclusion from practice is not necessary.
- [17] Accordingly, the Tribunal orders:
1. Pursuant to section 107(2)(b)(iii) of the *Health Ombudsman Act 2019* (Qld), the Tribunal finds that the respondent has behaved in a way that constitutes professional misconduct;
 2. Pursuant to section 107(3)(a) of the *Health Ombudsman Act 2019* (Qld), the respondent is reprimanded; and
 3. Each party must bear the party's own costs for the proceeding.