QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Health Ombudsman v White* [2019] QCAT 36
PARTIES:	**HEALTH OMBUDSMAN** (applicant) **v** **HAYDEN THOMAS WESLEY WHITE** (respondent)
APPLICATION NO/S:	OCR298-17
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	7 March 2019 and 1 May 2019
HEARING DATE:	19 July 2018
HEARD AT:	Brisbane
DECISION OF:	Judge Sheridan Assisted by: Dr G Powell Dr D Evans Mr M Halliday
ORDERS:	**1. Pursuant to s 107(2) of the *Health Ombudsman Act* 2013 (Qld), the respondent has behaved in a way that constitutes professional misconduct.** **2. Pursuant to s 107(3) of the *Health Ombudsman Act* 2013 (Qld), the respondent be reprimanded.** **3. Pursuant to s 107(3) of the *Health Ombudsman Act* 2013 (Qld), the respondent is fined an amount of $5,000 to be paid to the Health Ombudsman in five equal instalments payable by the end of each month with the first payment due by 31 March 2019.** **4. Each party bear their own costs.**
CATCHWORDS:	PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT AND UNPROFESSIONAL CONDUCT – DEPARTURES FROM ACCEPTED STANDARDS – where the practitioner admitted to unlawfully misappropriating and self-administering Schedule 8 controlled drugs over a six month period – where, at the time of the conduct, the practitioner had an impairment –

where the practitioner admitted to professional misconduct – whether the practitioner should be subject to a reprimand and/or a period of suspension or fine

Health Ombudsman Act 2013 (Qld), s 103, s 104, s 107
Health Practitioner Regulation National Law (Queensland), s 5
Public Service Act 2008 (Qld), s 188

Medical Board of Australia v Andrew [2015] QCAT 94, distinguished.
Medical Board of Australia v Dr "C" [2012] SAHPT 4, distinguished.
Medical Board of Australia v Henning [2014] SAHPT 15, distinguished.
Medical Board of Australia v Stephens [2018] WASAT 13, distinguished.

APPEARANCES & REPRESENTATION:

Applicant:	M T Hickey, instructed by the Office of the Health Ombudsman
Respondent:	G W Diehm QC, instructed by Ashurst Australia

REASONS FOR DECISION

[1] On 20 December 2017, the Health Ombudsman referred to the Tribunal a health service complaint against the respondent pursuant to s 103(1)(a) and s 104 of the *Health Ombudsman Act* 2013 (Qld) (**HO Act**). The matters alleged in the disciplinary referral arose from a self-disclosure notification made by the respondent.

[2] There are three charges the subject of the referral, which relate to the respondent's conduct whilst working as the director of the intensive care unit at a metropolitan hospital (**the ICU**). In summary, by the charges it is alleged that between May 2013 and mid-November 2013:

(a) **Charge 1** – the respondent misappropriated a Schedule 8 drug, Fentanyl, from his employer, in that he diverted Fentanyl intended to be discarded in the intensive care unit for the purposes of self-administration;

(b) **Charge 2** – the respondent unlawfully possessed a Schedule 8 drug, Fentanyl, in that he took possession of the drug in the manner outlined in charge 1 for the purposes of self-administration, without a lawful prescription and without permission or other lawful authority; and

(c) **Charge 3** – the respondent self-administered a Schedule 8 drug, Fentanyl, intravenously in the bathroom of the Hospital.

[3] It is alleged that as a result of the conduct, the respondent engaged in professional misconduct. In his response, the respondent admitted that his conduct amounted to professional misconduct.

[4] The matter has proceeded before the Tribunal by way of a statement of agreed facts with their being no factual issues in dispute.

[5] The parties did not reach agreement as to sanction and each party filed separate submissions. The Health Ombudsman submits that the appropriate sanction is that the respondent be suspended from practice for six months, or, in the alternative that the respondent be reprimanded and fined $25,000. The respondent submits that a reprimand is the most appropriate sanction, and that neither a suspension nor a fine is necessary.

Factual background

Professional background

[6] In 1990, the respondent completed a bachelor of medicine and a bachelor of surgery overseas.

[7] After working and studying overseas, the respondent moved to Brisbane in 2002, where he completed an intensive care fellowship at two metropolitan hospitals in Brisbane.

[8] In 2006, after working in anaesthetics at a Brisbane metropolitan hospital, the respondent was appointed Director of the ICU. Subsequently, he completed a graduate certificate in health economics and a fellowship in respiratory medicine, and then completed his fellowships with the College of Intensive Care Medicine of Australia and New Zealand and the Royal Australasian College of Physicians, Adult Medicine Division.

[9] The respondent has currently stepped aside as the director in order to have greater time for research.

Personal circumstances

[10] The respondent was first diagnosed with an anxiety disorder in his early 20s after moving overseas to study and being separated from his family and a familiar environment. This has at times developed into significant episodes of depression.

[11] The respondent had taken antidepressants at times, namely, Prozac, as well as Lexotan sporadically in order to treat his anxiety. His condition did not interfere with his daily life or work.

[12] From in or about 2002, after coming to Australia it seems that the respondent did not experience any significant problems with his mental health.

[13] However, the respondent's health began to deteriorate in 2011 due to a number of stressors. The respondent's underlying anxiety condition worsened, and in 2012 he began again taking Prozac for his anxiety, as well as Lexotan occasionally. Unfortunately, by May 2013, he was feeling increasingly overwhelmed.

Misconduct

[14] The respondent began to self-administer Fentanyl by way of injection in the bathroom of the Hospital in an effort to manage his considerable situational stress. He found that the Fentanyl took "the edge off" his anxiety. Initially, the respondent administered around 20 mg between one or two times a week. The dose steadily increased to 50 mg and then to 70 mg. The respondent's use increased to such an extent that eventually he was taking Fentanyl twice daily up to five or six times a week.

[15] The respondent would obtain the Fentanyl from discarded Fentanyl leftover from patients. Within the ICU at that time, no record was kept of discarded Fentanyl. This system enabled the respondent to systematically misappropriate small amounts without detection. It is not alleged that the respondent diverted any Fentanyl which had been intended for the direct use of patients.

[16] There is no evidence that the respondent was, at any time, intoxicated or affected by drugs whilst at work. It is not alleged that any patient was harmed during the period of his self-administration. This was acknowledged by the acting director of medical services at the Hospital, as well as by the chief executive officer at a Brisbane metropolitan health service.

[17] Colleagues of the respondent became suspicious of the respondent's conduct and the respondent was confronted by the director of medical services in August 2013. At that time, the respondent denied the accusations.

[18] When confronted again in November 2013, the respondent admitted personal usage, though only admitted sporadic use. In that meeting, the respondent agreed that he would notify the Medical Board of Australia (**Board**).

[19] The respondent voluntarily sought immediate treatment from a psychiatrist, Dr Apel, and submitted to the care of his general practitioner and a psychologist.

Immediate Action

[20] On 2 December 2013, the Immediate Action Committee of the Board (**Committee**) provided the respondent with a notice of proposed immediate action, inviting the respondent to make submissions. The Committee proposed to impose conditions on the respondent's registration.

[21] In making submissions, the respondent requested the proposed conditions be accepted as undertakings. His treating psychiatrist, Dr Apel, provided a letter to the Australian Health Practitioners Regulation Agency (**AHPRA**) dated 11 December 2013 in which he stated that he had arranged for the respondent to take three months of sick leave from work. In the letter, Dr Apel commented that the respondent displayed "significant underlying chronic anxiety and depression problems and very significant stressors in his life currently that have not previously existed."

[22] On 13 December 2013, the Committee took immediate action against the respondent. The Committee accepted the respondent's undertaking to practise subject to conditions; in particular conditions to attend for urine and drug screening and a health assessment together with an authority for Dr Apel to discuss with the Board the respondent's fitness to practice.

Impairment

[23] On 26 February 2014, at the request of the Board, the respondent attended upon Dr Prior for a health assessment. The respondent had by this time been off work for three months.

[24] In Dr Prior's report dated 7 March 2014, Dr Prior considered that the respondent was fit to return to work based on improvements made by him and his engagement in appropriate psychiatric treatment. Dr Prior considered that the respondent would be able to practise subject to certain conditions.

[25] Following the report of Dr Prior, the conditions the subject of the undertaking were slightly varied. The respondent was permitted to continue to practise.

[26] The respondent has practised free from any conditions since 29 September 2015.

Reprimand

[27] The respondent's conduct was referred by the Hospital to the Crime and Misconduct Commission (**Commission**) on 6 December 2013 in relation to the misappropriation, including theft, of official property. However, the Commission advised the Hospital to deal with the matter, and that it might consider referring the conduct to the Queensland Police Service.

[28] On 5 March 2014, the respondent was reprimanded under s 188(1) of the *Public Service Act* 2008 (Qld). In deciding that this was the appropriate sanction, reference was had to the respondent's admissions and remedial actions taken. It was considered that a reprimand was reasonable and appropriate.

Referral

[29] On 15 August 2014, the Board referred to the Health Ombudsman the issue of the misconduct. The office of the Health Ombudsman conducted their own investigations, which ultimately resulted in the filing of these referral proceedings in December 2017.

Categorisation of the conduct

[30] In respect of each charge, it is alleged that the respondent's conduct amounts to professional misconduct. The term professional misconduct is defined in s 5 of the *Health Practitioner Regulation National Law (Queensland)* (**National Law**). Sub-paragraphs (a) and (b) are defined by reference to unprofessional conduct. Sub-paragraph (c) defines the term as being conduct inconsistent with the practitioner being a fit and proper person to hold registration in the profession.

[31] Whilst the referral relied on all three limbs, the submissions of both parties and the admission made by the respondent simply accept that the conduct amounted to professional misconduct.

[32] There is no evidence suggesting that the respondent is not a fit and proper person. The misconduct is nevertheless properly characterised as professional misconduct.

Sanction

Approach to sanction

[33] Having determined under s 107(2) of the HO Act that the conduct of the respondent can properly be categorised as professional misconduct, the Tribunal's powers to make orders under s 107(3) of the HO Act are enlivened.

[34] It is accepted that in imposing any sanction, the health and safety of the public are paramount.[1] The purpose is protective, not punitive.[2]

[35] It is agreed that the Tribunal in determining the order to be made must consider the maintenance of professional standards, the preservation of public confidence in the profession, personal or specific deterrence and general deterrence. It is accepted that the weight to be given to each will depend on the facts of a particular case. Central to any examination must be an assessment of whether the practitioner presents an ongoing risk to the public. The degree of insight, and any evidence of rehabilitation demonstrated by the practitioner, will be relevant.[3]

[36] The Tribunal will need to consider "other matters which may be regarded as aggravating the conduct or mitigating its seriousness."[4]

Applicant's submissions on sanction

[37] The applicant has submitted that general deterrence is of the utmost importance in this case so as to denounce the respondent's transgressions and to send a clear message to other practitioners.

[38] Whilst the Ombudsman accepts no patient was harmed, it was submitted that the fact that the conduct was of a kind which gave rise to a risk of harm to a patient is a serious thing and something which the Tribunal should take account of. Reference was made to the prolonged period of drug taking and the respondent's behaviour in concealing its occurrence when initially confronted which, it was submitted, was indicative of a consciousness on the part of the respondent that his conduct was wrong and improper.

[39] The applicant maintained that the starting position when there has been misappropriation of Schedule 8 drugs for the purposes of self-administration is a suspension or a fine; and on the facts here it was submitted that a period of suspension was more appropriate. Particular reliance was placed on the decision of the South Australian Tribunal in *Medical Board of Australia v Dr "C"*.[5] It was said that the decision in *Dr "C"* supported a period of suspension, despite accepting, as the Ombudsman did, that there was a very low likelihood of further misconduct of this kind by the respondent. It was submitted that a serious sanction needed to be imposed, particularly given the senior position of the respondent. The submission of the Ombudsman was that the misconduct needed to be "resoundingly denounced".

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1 HO Act, s 4(1).

2 See, for example, *Clyne v NSW Bar Association* (1960) 104 CLR 116; *NSW Bar Association v Evatt* [1968] HCA 20; (1968) 117 CLR 177; *Medical Board of Australia v Dolar* [2012] QCAT 271, [30].

3 *Medical Board of Australia v Blomeley* [2018] QCAT 163, [142].

4 *Legal Profession Complaints Commission and A Legal Practitioner* [2013] WASAT 37(S), [25].

5 [2012] SAHPT 4.

[40] Relying on statements of principle in *Khosa v Legal Profession Complaints Commission*[6] adopted by the Tribunal in *Medical Board of Australia v Stephens,*[7] it was submitted by the Ombudsman that a suspension is appropriate when a practitioner has fallen below the requisite standard of conduct, even where the practitioner demonstrates the quality of character and necessary attributes for their profession. In *Stephens'* case, it was said, "… suspension is suitable where the Tribunal is satisfied that, upon completion of the period of suspension, the practitioner will be fit to resume practice."[8] The Ombudsman did not suggest here that the respondent was not presently fit for practice; it being accepted that the respondent had been practising absent conditions since September 2015.

[41] The applicant submitted that although a sanction of suspension was warranted, the circumstances are such that an alternative sanction of a fine and reprimand was open. Reliance was placed by the Health Ombudsman on the cases of *Medical Board of Australia v Stephens*,[9] *Medical Board of Australia v Andrew,*[10] *Medical Board of Australia v Roberts,*[11] *Medical Board of Australia v Henning,*[12] *In Re Dr Peter Keith*[13] and *Health Complaints Commission v Dr Adrian Cohen*[14]where fines of $10,000 or greater had been imposed.

Respondent's submissions on sanction

[42] The respondent submitted that a number of factors must be taken into consideration when considering the severity of the sanction that is appropriate.

[43] In oral submissions, counsel for the respondent made reference to what was described as the exceptional circumstances of this case: how the conduct came to occur, the successful rehabilitation of the respondent, the respondent's three months out of practice, his remorse and insight, and his embarrassment as to the effect of his conduct upon his family and his colleagues. It was said, he has already been reprimanded, he has complied with the Board's imposed conditions and he has not transgressed since.

[44] It was submitted that the Tribunal must have regard to the facts of the particular case, the circumstances that affect it, and identify the orders made or range of orders that it may make under the act.

[45] It was submitted that the effect of the submission of the Health Ombudsman is that in any case, no matter what the circumstances otherwise are, where there is the diversion of drugs of dependence for personal use by the practitioner, the Tribunal can do nothing other than impose a sanction of cancellation, suspension or a fine. It was submitted that the authorities do not support that approach but rather that a flexible approach is required to take into account the particular circumstances of any given case.

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6 [2017] WASCA 192.
7 [2018] WASAT 13.
8 Ibid, [70].
9 Ibid.
10 [2015] QCAT 94.
11 [2014] WASAT 76(S).
12 [2014] SAHPT 15.
13 [2007] NSWMT 12.
14 [2007] NSWMT 6.

[46] Counsel for the respondent emphasised that the issuing of a reprimand by the Tribunal is a most serious sanction.

[47] It was submitted that the respondent is a well-respected member of the medical community and it would be a disservice to the public not to allow the respondent to continue his employment.

[48] The respondent relied upon affidavit evidence from the acting director of the unit and the nurse unit manager. That evidence, it was submitted, demonstrates that a suspension of the respondent's registration would have a negative impact on the ICU of the Hospital. The respondent is "an invaluable member"[15] of the team and his absence "would increase the on-call burden"[16] for the other consultants working in the unit. The acting director of the unit gave evidence that the unit would be required to hire a locum and commented that "it might be difficult to source a locum that would match [the respondent's] clinical experience and breadth of knowledge."[17] The nurse unit manager said, "Suspension of his duties would severely impact upon the ability of the Intensive Care Unit to continue to provide care to the critically ill patients within our community and would place the [Hospital] ICU workforce under extreme stress."[18]

[49] Moreover, it was submitted imposing a suspension or a fine under the justification that the conduct of the respondent jeopardises the public, is questionable considering it has taken four years to reach the question of sanction.

[50] The respondent referred to *Lee v Health Care Complaints Commission*[19] to illustrate why specific and general deterrence do not play as big a role in sentencing as they do in criminal law: the health and safety of the public is the focus of the Tribunal, not to punish.

[51] Furthermore, the respondent argues that neither a suspension nor a fine is necessary to ensure that the respondent does not transgress again. Given the respondent's personal and professional history, his understanding of the circumstances which led to the offending, the successful psychiatric and psychological rehabilitation that has taken place, the obvious embarrassment he must feel for this matter and the imposition of a reprimand, a satisfactory level of specific deterrence exists.

[52] The respondent argues that the applicant's case authorities suggest that a suspension is to be imposed when the practitioner will only be fit and proper for the job after the suspension is over. Given the four years that has elapsed, it was submitted, the argument cannot be made that the respondent requires a suspension from practice to be fit and proper for his role. He has demonstrated abstention from drug use and it is said, has "good control" over his mental health.

Comparative Cases

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15 Affidavit of acting director of ICU dated 23 March 2018, [12].
16 Ibid, [12].
17 Ibid, [12].
18 Affidavit of Nurse Unit Manager of ICU dated 23 March 2018, [16].
19 [2012] NSWCA 80.

[53] In making its submissions as to appropriate sanction, the Health Ombudsman referred specifically to the case of *Dr "C"*.[20] Dr C was a registered medical practitioner who had self-administered schedule 8 drugs obtained using falsified prescriptions. It was said that, like here, Dr C was a highly qualified practitioner in her workplace and was suffering from various emotional stressors at the time. Dr C was reprimanded, fined $5000 and had conditions imposed. In sanctioning Dr C, the Tribunal stated that "the conduct complained of is such that ordinarily the Tribunal would have been inclined to impose a period of suspension in the order of the period over which the practitioner has ceased to practise but in this case, imposes no period of suspension."[21] In imposing no period of suspension, the Tribunal specifically took into account the circumstances of the case and the fact that the practitioner had voluntarily ceased practice for a period of approximately one year.

[54] The Health Ombudsman said the difference in the case of Dr C is that she had proffered an undertaking not to practice. Whilst that is true, it is also clear that Dr C had ceased practising so as to address her health issues. In fact, by the time the matter came on for hearing, it appeared that although Dr C had improved she was only ready for a conditional return to practice. In contrast, by the time this matter came on for hearing, the respondent had been practising free of conditions since September 2015.

[55] Dr C's conduct had also continued over a two year period; a significantly longer period than that of the respondent. It involved the additional element of the creation by Dr C of false prescriptions.

[56] The Ombudsman made reference to the decisions in *Health Care Complaints Commission v Flynn* [22] and *Nursing and Midwifery Board of Australia v Mahon*[23] in support of the submission that a period of suspension was warranted. Whilst those cases involved the taking of Schedule 8 drugs from the workplace, the circumstances are so different that they offer little guidance to the Tribunal.

[57] In support of its alternative sanction of a very large fine, close to the statutory maximum, reliance was placed on a number of cases involving conduct in the clinical care of patients. The case of *Stephens*, involved allegations of improper treatment of a patient who subsequently died. Whilst Dr Stephens, like the respondent, was working under a number of personal stressors at the time, given the outcome for the patient, it is difficult to draw any useful analogy.

[58] Reference was also made to the case of *Henning*, as an example where it was said that a doctor had insight. There, the conduct was unlikely to be repeated but nevertheless a fine of $25,000 with a reprimand was imposed. However, Dr Henning had contested the charge so it is difficult to see that there was any real insight. Further, his conduct had exposed a patient to very significant risks.

[59] In the case of *Andrew*, a medical certificate certifying a patient was able to drive had been wrongly issued and the patient had struck and killed a pedestrian. Dr Andrew was reprimanded, fined $10,000 and had conditions imposed. In imposing a fine, Judge Horneman-Wren stated that he "did not consider that a reprimand would act

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20 *Medical Board of Australia v Dr "C"* [2012] SAHPT 4.
21 Ibid, [36].
22 [2009] NSWNMT1.
23 [2014] VCAT 403.

as a real deterrent to other practitioners, and therefore provide protection to the public."[24] The Tribunal did not consider that a suspension of Dr Andrew was necessary.

Analysis

[60] In assessing the appropriate sanction to be imposed, the Tribunal must have regard to the exceptional mitigating circumstances in this case. During the four years it has taken for this matter to come before the Tribunal, the respondent has undergone treatment with a psychiatrist and, on the recommendation of his psychiatrist, had taken an immediate three month period off work. He has participated in extensive psychotherapy.

[61] Upon returning to work, the respondent had a further period of non-clinical duties and a period of no overtime or shift work. For nine months, the respondent was subject to the supervision of two colleagues within the Hospital. As a director of a unit, the respondent was forced to make full disclosures to all those working within the unit of which he was the director. The respondent was forced to reveal his own vulnerabilities.

[62] The respondent was subjected to a period of almost two years of monitoring by the Board.

[63] The Tribunal finds that the steps taken by the respondent to rehabilitate show a very high level of insight and remorse. The Tribunal accepts, as was observed by his treating psychiatrist, the process of rehabilitation has resulted in structural changes in the respondent's thinking, with the resultant effect of more open communication within his work place and changes in his domestic environment.

[64] The Tribunal considers the likelihood of future similar misconduct to be extremely low. The removal of any ongoing monitoring conditions by the Board supports such a conclusion. Personal deterrence cannot be considered a factor supporting the sanction proposed by the Health Ombudsman, nor is it contended as such.

[65] In terms of the need to deter others, the respondent's unique situational stressors and the interplay between the respondent's health at the time and the misconduct must be relevant. Whilst the Tribunal accepts that the period off work and the monitoring by the Board cannot be treated in these proceedings as the respondent having been penalised, it is part of the overall factual matrix. Ultimately, the issue for the Tribunal is whether the protective purpose can be satisfied without subjecting the respondent to a period of suspension from practice as proposed, or in the alternative a very significant fine.

[66] It is clear from the evidence that the absence of the respondent would increase the on-call burden for the other consultants within the department considerably. The acting director of the ICU says that it would be necessary to hire a locum but that it would be difficult to find a locum who would match the respondent's clinical experience and breadth of knowledge. Even if a locum could be found, the Tribunal accepts that the absence of the respondent will have a negative impact on the ICU of the Hospital.

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24 [2015] QCAT 94, [119].

[67] Having had the assistance of the assessors, the Tribunal is not satisfied any period of suspension is necessary. The Tribunal is concerned that the imposition of a fine could be viewed only as punitive, and a fine of the order proposed by the Ombudsman certainly would be; especially considering the maximum allowed under the legislation is $30,000.

[68] Nevertheless, the Tribunal accepts in this case it is important to affirm the seriousness with which the misconduct must be treated and so a fine of $5,000 will be imposed together with a formal reprimand.

Non-Publication Order

[69] A non-publication order was made in these proceedings protecting the identity of any family member of the respondent. In the publication of these reasons the Tribunal was concerned to maintain the integrity of that order. These reasons were provided to the parties to enable an application or further submissions to be made if, upon a review of these reasons, it was considered necessary in view of the existence of the non-publication order. Appropriate directions were included to enable the provision of any application or submissions.

[70] Further submissions were made. In those submissions, the parties were in agreement with respect to the need for the Tribunal to either redact the disclosure of certain facts, or if possible, delete reference to those facts. As a result of those submissions, the Tribunal has deleted the disclosure of certain facts in these reasons. The Tribunal has not changed its findings or the orders made.

[71] In the submissions, on behalf of the respondent it was submitted that the reasons should remain de-identified. The Health Ombudsman submitted that, with the deletions as agreed, the integrity of the non-publication order could be maintained and the respondent should be identified. It was submitted that to do otherwise would offend the principles of 'open justice' and that the tribunal under s 66 could only make a non-publication order if the tribunal considered the order "is necessary" to avoid one of the specified consequences or "for any other reason in the interest of justice".

[72] As this Tribunal has previously stated, the discretion given to the Tribunal by s 66 has been described as being "underpinned by the principle of open justice which aims to ensure not only that court proceedings are fully exposed to public scrutiny, but also to maintain the integrity and independence of the courts."[25]

[73] The onus is on the applicant to show special circumstances exist which justify the making of the order. With the making of the amendments as agreed between the parties, the Tribunal is satisfied the integrity of the existing non-publication order can be preserved.

[74] Further, whilst there is undoubtedly an interplay between the practitioner's health at the time and the misconduct, the Tribunal does not consider that is a basis for the extension of the current non-publication order to protect the identity of the respondent. The Tribunal considers these reasons should not remain de-identified.

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25 *Cutbush v Team Maree Property Service (No 3)* [2010] QCATA 89, [9], referred to in *Medical Board of Australia v Waldron* [2017] QCAT 443 at [81] – [82]

Costs

[75] At the time of the delivery of the reasons to the parties, the parties were asked to file any submissions on costs. In their further communications to the Tribunal, the parties have confirmed they will each bear their own costs. It is appropriate the Tribunal record the agreement reached.

Orders

[76] Accordingly, it is the decision of the Tribunal that:

1. Pursuant to s 107(2) of the *Health Ombudsman Act* 2013 (Qld), the respondent has behaved in a way that constitutes professional misconduct.

2. Pursuant to s 107(3) of the *Health Ombudsman Act* 2013 (Qld), the respondent be reprimanded.

3. Pursuant to s 107(3) of the *Health Ombudsman Act* 2013 (Qld), the respondent is fined an amount of $5,000 to be paid to the Health Ombudsman in five equal instalments payable by the end of each month with the first payment due by 31 March 2019.

4. Each party bear their own costs.