

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Health Ombudsman v Creagh-Scott* [2019] QCAT 69

PARTIES: **HEALTH OMBUDSMAN**
(applicant)
v
**ANGUS FRANCIS LETHBRIDGE CREAGH-
SCOTT**
(respondent)

APPLICATION NO/S: OCR055-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 29 March 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Judge Allen QC, Deputy President

Assisted by:

Ms M Armstrong
Ms M Barnett
Professor M Lupton

- ORDERS:
- 1. Pursuant to s 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 s 107(3)(a) of the *Health Ombudsman Act 2013 (Qld)*, the respondent is reprimanded.**
 - 3. Pursuant to s 107(4)(a) of the *Health Ombudsman Act 2013 (Qld)*, the respondent is disqualified from applying for registration for a period of three years and six months.**
 - 4. Pursuant to s 107(4)(b) of the *Health Ombudsman Act 2013 (Qld)*, the respondent is permanently prohibited from providing any health service in a clinical or non-clinical capacity (paid or otherwise) to any person under the age of eighteen years.**
 - 5. Each party bear their own costs of the proceedings.**

CATCHWORDS: PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – NURSES – DISCIPLINARY PROCEEDINGS – SANCTION – where the respondent was a registered nurse – where the respondent was convicted on his own plea of guilty to three offences relating to child exploitation material – where the respondent voluntarily resigned his employment and surrendered his registration – where the respondent has demonstrated remorse – where the respondent is receiving mental health treatment on an ongoing basis - where the respondent has cooperated with the proceedings – where the respondent concedes that the conduct amounts to professional misconduct – where the parties made joint submissions as to sanction – whether sanction proposed is appropriate

Health Ombudsman Act 2013 (Qld), s 58(1), s 70, s 103, s 104, s 107

Health Practitioner Regulation National Law Act 2009 (Qld) s 5

Health Ombudsman v Mak [2019] QCAT 24

Medical Board of Australia v Martin [2013] QCAT 376

Nursing and Midwifery Board of Australia v Brearley [2012] QCAT 323

Medical Radiation Technologists Board of Queensland v Groves [2010] QCAT 528

Pharmacist Board of Queensland v Gordon [2010] QCAT 181

REPRESENTATION:

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

Respondent: Ashworth Lawyers

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 applicant has referred a health service complaint against the respondent to the Tribunal pursuant to s 103(1)(a) and s 104 of the *Health Ombudsman Act 2013 (Qld)* (“HO Act”). The applicant alleges that the respondent behaved in a way that constitutes professional misconduct by his commission of criminal offences relating to child exploitation material whilst he was a registered nurse.
- [2] There is no dispute between the parties as to the relevant facts, including the conduct alleged to constitute professional misconduct, its characterisation as professional misconduct and appropriate orders by way of sanction. The respondent has admitted the alleged particulars of his conduct and that he engaged in professional

misconduct. The parties have reached agreement as to the terms of a Statement of Facts and have filed joint submissions in which they both contend for a finding that the respondent has behaved in a way that constitutes professional misconduct and jointly submit as to appropriate orders by way of sanction.

- [3] The respondent is 51 years of age and was aged 47 at the time of the conduct the subject of these proceedings in 2015. The respondent obtained his nursing qualifications in the United Kingdom in 1988. He held various nursing and midwifery positions in Australia from 2001 to 2012. He was employed as a registered nurse at the Princess Alexandra Hospital from August 2015 to 27 November 2015.
- [4] On 23 November 2015, police executed a search warrant at the respondent's residence and located devices with child exploitation material in the form of still images and videos. The respondent participated in an interview with police during which he made admissions in relation to offences of possessing, accessing and sharing child exploitation material. At the conclusion of the interview police charged the respondent with the following offences:
- (a) possessing child exploitation material on 23 November 2015 (s 228D of the *Criminal Code (Qld)*);
 - (b) using a carriage service to access child pornography material between 1 November 2014 and 24 November 2015 (s 474.19(1) of the *Criminal Code Act 1995 (Cth)*); and
 - (c) using a carriage service to transmit, make available, publish, distribute, advertise, or promote child pornography material between 1 June 2015 and 24 November 2015 (s 474.19(1) of the *Criminal Code Act 1995 (Cth)*) ('the charges').
- [5] On 27 November 2015, the respondent resigned from his employment at the Princess Alexandra Hospital. On the same day, the respondent called the Office of the Health Ombudsman advising of the charges and of his resignation of employment. The respondent's employer confirmed such matters in its notification of 30 November 2015. On 1 December 2015, the applicant received information from the Queensland Police Service as to the charges. On 23 December 2015, the applicant suspended the respondent's registration by way of immediate action under s 58(1) of the HO Act, and also prohibited the respondent from providing any health service to any person under the age of 18 years by way of immediate action under s 70 of the HO Act. On 6 January 2016, the respondent completed a notice to surrender registration and the respondent's registration was surrendered on 18 January 2016. The respondent has not been registered as a nurse since that time.
- [6] On 14 October 2016, the respondent pleaded guilty to the charges in the District Court of Queensland at Brisbane. He was sentenced to concurrent periods of imprisonment of 18 months wholly suspended for three years and two years probation. The sentencing Judge noted that the respondent had searched for child pornography on eight occasions during the 12 months prior to his arrest. The sentencing Judge noted the extremely disturbing nature of the material found in the respondent's possession, mainly images of young boys, including a baby being subject to abuse, some of which involved sexual penetration or aspects of sadism.

The sentencing Judge noted that the respondent's early pleas of guilty and the significant impact upon the respondent of the loss of his nursing profession needed to be recognised in any sentence. The sentencing Judge noted the respondent's prejudicial upbringing including extensive sexual abuse of the respondent as a child. It appeared that publicity relating to the Royal Commission into Institutional Responses to Child Sexual Abuse had triggered ruminations by the respondent on his own experiences as a child and led to his commission of the offences. The sentencing Judge noted the extensive efforts made by the respondent to seek treatment and counselling and the positive reports from his treating psychologists. The sentencing Judge accepted that the respondent was remorseful.

- [7] The parties jointly submit that the respondent has demonstrated insight and remorse into his conduct by his full and frank admissions when interviewed by police, his resignation from employment after being charged, his surrender of registration, his early pleas of guilty to the charges and his extensive and ongoing efforts to obtain treatment and counselling.
- [8] The parties jointly submit that the respondent was suffering from major depression with anxious distress and complex post-traumatic stress disorder at the time of the offences and is receiving ongoing treatment for his mental health conditions.
- [9] The parties jointly submit that the Tribunal should find that the respondent has behaved in a way that constitutes professional misconduct as defined in limb (c) of the definition of "professional misconduct" in s 5 of the *Health Practitioner Regulation National Law Act 2009* (Qld), on the basis that the respondent's conduct, occurring in his personal life, is inconsistent with the respondent being a fit and proper person to hold registration as a registered nurse. The Tribunal accepts such submission and finds accordingly.
- [10] The parties have jointly submitted that the following orders are appropriate ones by way of sanction:
- (a) that the respondent be reprimanded pursuant to s 107(3)(a) of the HO Act;
 - (b) that the respondent be disqualified from applying for registration for a period of three years and six months pursuant to s 107(4)(a) of the HO Act; and
 - (c) that the respondent be permanently prohibited from providing any health service in a clinical or non-clinical capacity (paid or otherwise) to any person under the age of 18 years pursuant to s 107(4)(b) of the HO Act.
- [11] In support of the submission as to the period of disqualification from applying for registration, the parties have referred to the following comparative cases:
- (a) *Nursing and Midwifery Board of Australia v Brearley* [2012] QCAT 323;
 - (b) *Medical Radiation Technologists Board of Queensland v Groves* [2010] QCAT 528; and
 - (c) *Pharmacist Board of Queensland v Gordon* [2010] QCAT 181.
- [12] The Tribunal also notes the decision of *Health Ombudsman v Mak* [2019] QCAT 24.

- [13] The parties jointly submit that the proposed prohibition order pursuant to s 107(4)(b) of the HO Act is an appropriate order in circumstances where the respondent is receiving ongoing and indefinite treatment for mental health conditions that contributed to his criminal conduct.
- [14] The parties submit and the Tribunal accepts that the sanction proposed by the parties falls within a permissible range of sanction for the conduct having regard to comparable cases in the jurisdiction. The Tribunal ought not to depart from a proposed sanction agreement between the parties unless it falls outside a permissible range.¹ The Tribunal finds that the proposed sanction is an appropriate one in all the circumstances.
- [15] Accordingly, the Tribunal orders that:
- (a) pursuant to s 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;
 - (b) pursuant to s 107(3)(a) of the *Health Ombudsman Act 2013* (Qld), the respondent is reprimanded;
 - (c) pursuant to s 107(4)(a) of the *Health Ombudsman Act 2013* (Qld), the respondent is disqualified from applying for registration for a period of three years and six months;
 - (d) pursuant to s 107(4)(b) of the *Health Ombudsman Act 2013* (Qld), the respondent is permanently prohibited from providing any health service in a clinical or non-clinical capacity (paid or otherwise) to any person under the age of eighteen years; and
 - (e) each party bear their own costs of the proceeding.

¹ *Medical Board of Australia v Martin* [2013] QCAT 376, [91]-[93].