

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Health Ombudsman v Keast* [2020] QCAT 197

PARTIES: **DIRECTOR OF PROCEEDINGS ON BEHALF OF
THE HEALTH OMBUDSMAN**
(applicant)

v

CATHERINE FRANCIS KEAST
(respondent)

APPLICATION NO/S: OCR100-19

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 5 May 2020 (*ex tempore*)

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Judicial Member John Robertson
Assisted by:
Ms H. Barker
Dr K. Forrester
Mr M. Halliday

ORDERS:

- 1. Pursuant to section 107(2)(iii) of the *Health Ombudsman Act 2013*, 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 2013* the respondent is reprimanded, and**
- 3. There is no order as to costs.**

CATCHWORDS: PROFESSIONS AND TRADES – HEALTH CARE
PROFESSIONALS – NURSES – DISCIPLINARY
PROCEEDINGS – Professional misconduct – registered
nurse convicted of one count of stealing fentanyl and one
count of possession of fentanyl – early plea of guilty and
cooperation with the Health Ombudsman –
characterisation of conduct - sanction

Health Ombudsman Act 2013 (Qld) s 107

APPEARANCES &
REPRESENTATION:

Applicant: Director of Proceedings on behalf of the Health Ombudsman

Respondent: Quinn & Scattini 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] These disciplinary proceedings were referred to the Tribunal by the applicant Director on the 29th of March 2019. An agreed statement of facts signed by the applicant's delegate and the respondent's solicitor, was filed on the 27th of June 2019. The respondent was, at all material times, a registered nurse. She originally obtained her qualifications in Ireland in 2004.
- [2] The incident the subject of these disciplinary proceedings occurred on the 13th of December 2017. Shortly stated, the respondent was then working in an ICU of a Brisbane Hospital, and was rostered to work a non-clinical research stay, which did not require her to have contact with patients.
- [3] At around 9.50 am, on that day, she co-signed with another staff member to take possession of two ampoules of the dangerous drug Fentanyl for administration to a patient. She attended the bedside of the patient and, in effect, pretended to administer the drug to the patient via a saline drip; however, she retained the drugs, and later was found in possession of one used ampoule and syringe and one unused ampoule.
- [4] She was charged by police with two offences. On 4 July 2018, she pleaded guilty to one count of stealing Fentanyl, for which she received a good behaviour bond, and she also pleaded guilty to one count of possession of the dangerous drug Fentanyl, for which she was convicted and not further punished. No conviction was recorded.
- [5] On the 14th of March 2018, the Health Ombudsman imposed conditions on her nursing registration which, effectively, curbed her ability to practice in a clinical setting. She had been first registered with the Nursing and Midwifery Board in 2014. On the 31st of May 2018, she did not renew her nursing registration.
- [6] At the time of her court appearance, she had no previous convictions, and the court found that she had led a productive and worthwhile life. She pleaded guilty at an early stage. She has cooperated with the office of the Health Ombudsman, and in the facilitation of the resolution of these disciplinary proceedings.
- [7] At the plea hearing in the Magistrates Court, the respondent's solicitor tendered two documents: one, a report from Q-Merit, and the other a report from a clinical psychologist. Both reports are available to the Tribunal.
- [8] The respondent came to Australia in 2006 with her Australian husband, who she had married in 2005. Soon after her arrival in Australia she became extremely unwell, and was ultimately diagnosed with Crohn's disease and she developed arthritis and PTSD. She has had many surgeries and has suffered significant symptomology including pain resulting from her conditions.

- [9] From around 2014 she started to develop a pattern of reliance on prescription opioids such as Endone, which she told investigators she had managed to control through exercise just prior to the incident involving the Fentanyl. During the Q-Merit program, she engaged with both a psychiatrist and a psychologist and at the time of the court hearing was well on her way to qualifying as a personal trainer, which included tertiary study.
- [10] The Q-Merit report indicates that she has made very significant progress in addressing the multifaceted reasons for her offending behaviour. The psychologist's report confirms a diagnosis of PTSD, relating to both the health issues and the unexpected death of her father and a close friend and other matters. She was diligent throughout the Q-Merit process in seeking treatment, and by her actions since being charged, she shows considerable insight into her unprofessional behaviour.
- [11] These proceedings are protective in nature and not punitive. As I have noted, the respondent in this case has shown considerable insight into her behaviour and has taken significant steps to deal with her health issues. Clearly, for a health provider to use her position of trust in a hospital to steal drugs prescribed for a highly vulnerable patient in an ICU is serious and amounts to professional misconduct. The respondent recognises this in her own submission.
- [12] Deterrence is always an important aspect of disciplinary proceedings such as this, because professionals in the position of the respondent, who have access to dangerous drugs in the workplace and then misuse those drugs, can also compromise the health and safety of patients and undermine the confidence the public has in the health system.
- [13] In effect, by the early action of the Health Ombudsman and by the respondent's own decision not to renew her registration, she has not practiced as a nurse for over two years. Until then, that had been her only career. There is no issue that her conduct breaches both the relevant Code of Conduct and Code of Ethics for nurses, and, as I have noted, had the tendency to both compromise the health and safety of a vulnerable patient and was apt to undermine public confidence in the profession.
- [14] As against that, up until the time of her offending, she had led an otherwise exemplary professional career, in the face of serious and long-term health conditions. She has shown considerable insight and resilience in addressing the issues behind her conduct and moving on with her life and into another career.
- [15] The orders will be as follows;
1. Pursuant to section 107(2)(iii) of the *Health Ombudsman Act 2013*, 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 2013* the respondent is reprimanded, and
 3. There is no order as to costs.