

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Health Ombudsman v Rissanen* [2020] QCAT 96

PARTIES: **HEALTH OMBUDSMAN**
(applicant)

v

ARTO RISSANEN
(respondent)

APPLICATION NO/S: OCR282-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 12 March 2020 (*ex tempore*)

HEARING DATE: 12 March 2020

HEARD AT: Brisbane

DECISION OF: Judicial Member McGill SC
Assisted by:
Professor Justin Kenardy
Dr Andrea Quinn
Mrs Fiona Petty

ORDERS:

1. **With respect to Charge 1, pursuant to s 104(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. **With respect to Charge 3, pursuant to s 107(2)(b)(ii) of the *Health Ombudsman Act 2013 (Qld)*, the Tribunal decides that the respondent has behaved in a way that constitutes unprofessional conduct.**
3. **Pursuant to s 107(3)(a) of the *Health Ombudsman Act 2013 (Qld)*, the respondent is reprimanded.**
4. **Each party to the proceedings bear the party's own costs to the proceedings.**

CATCHWORDS: PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – PSYCHOLOGISTS – where respondent engaged in a boundary violation with a vulnerable patient – where respondent admitted professional misconduct and unprofessional conduct – whether the respondent should be subject to a period of suspension

Health Ombudsman Act 2013 (Qld) s 107
 Health Practitioner Regulation National Law
 (Queensland) s 5, s 131

Healthcare Complaints Commission v Cox [2019]
 NSWCATOD 16
Health Ombudsman v Kimpton [2018] QCAT 405
Nursing and Midwifery Board of Australia v Clydesdale
 [2013] QCAT 191
Nursing and Midwifery Board of Australia v Tainton
 [2014] QCAT 161
Psychology Board of Australia v Dowell [2011] QCA
 2608
Psychology Board of Australia v Duangpatra [2012]
 QCAT 514
Psychology Board of Australia v GA [2014] QCAT 409
Psychology Board of Australia v Garcia [2015] VCAT
 128
Psychology Board of Australia v Wakelin [2014] QCAT
 516

APPEARANCES &
 REPRESENTATION:

Applicant: M Fairweather of Minter Ellison Lawyers
 Respondent: G Sheppard of Barry Nilsson

REASONS FOR DECISION

- [1] This is a referral by the applicant of disciplinary proceedings against the respondent under the *Health Ombudsman Act 2013 (Qld)*, s 103(1)(a) and s 104. Under s 126 of that Act, I constitute the Tribunal. I am sitting with assessors, Professor Justin Kenardy, Dr Andrea Quinn, and Mrs Fiona Petty. Their function is to advise me in relation to questions of fact: s 127.
- [2] The respondent was registered to practice as a psychologist and so was a registered health practitioner for the purposes of the Health Practitioner Regulation National Law. The applicant alleges that the respondent engaged in professional misconduct in a particular matter or, in the alternative, unprofessional conduct or unsatisfactory professional performance in that matter, and that he engaged in unprofessional conduct in failing to advise the Psychology Board of Australia of his suspension from duties by his employer, pending the investigation of allegations by a patient.
- [3] The respondent, who has had the benefit of legal advice, admits that his conduct in the matter constituted professional misconduct and that his failure to advise the Psychology Board amounted to unprofessional conduct. The factual basis for the proceeding is set out in an agreed statement of facts. There are no disputed facts between the applicant and the respondent. The facts, taken largely from that statement, may be summarised as follows.

Summary of Facts

- [4] The respondent was registered as a psychologist on 20 February 2007, and from 9 March 2009 was employed full time as a psychologist by a health service. He also worked as a psychologist in a private practice. In the course of his employment with the health service, in September 2013 he provided psychological care as case manager to a patient of the health service, a woman then aged 22. She was, to his knowledge, in a vulnerable state, being treated for borderline personality disorder. He was then aged 55.
- [5] The respondent began to meet and communicate with this patient outside work hours, not in the course of his employment. He spent time with her and communicate by text messages at various times of the day and night. The respondent denied that his motivations were romantic or sexual, but in more than one text message he said that he loved her, and in his response to his employer after the matter came out, he referred to a deep personal attachment to her: para (f)(i). It is not alleged that the relationship became sexual. During the relationship, he spoke to her about another patient in terms which breached the confidentiality of that patient.
- [6] The patient was never particularly enthusiastic about the relationship and, in time, wanted to break it off. In December 2014, she told him to stop texting her, but he continued to do so, and she became agitated and threatened self-harm unless he ceased contacting her. There was an agreement made between them that he would not continue to contact her, but that was broken by the respondent, and in January and February 2015, she asked again that he cease contacting her.
- [7] He persisted, however, and in March 2015, she complained to her psychiatrist about the respondent. This led to an investigation, but up until March 2015 the respondent did not cease to be involved in the psychological care of the patient. On 28 April 2015 the respondent was suspended by his employer pending the outcome of the investigation. He did not then report this to the Psychology Board of Australia, although he knew that his employer was going to notify the applicant, as it was required to do.
- [8] Following its investigation, the Health Service, on 29 September 2015, advised its intention to terminate his employment. Before that occurred, on 6 October 2015, he resigned his employment with the Health Service. When he applied to renew his registration in November 2015, he disclosed that he had been suspended by his then employer. He commenced part-time employment with a private employer in October 2015. He remained in that employment until 27 July 2017 when that practice closed. Since July 2017 he has not practised as a psychologist. In November 2019 he did not renew his registration, and his solicitor advised today that he does not intend to resume practice as a psychologist.
- [9] In late May 2015, the applicant decided to investigate this matter. The respondent was interviewed on 28 January 2016. A transcript of that interview is not available because of an equipment malfunction. Following an investigation by the Psychology Board of Australia into a related allegation, the respondent's approval to supervise other practitioners was removed and conditions were imposed on his registration. The respondent appealed to the Tribunal in 2016 against the decision of the board. On 9 December 2016 the Tribunal ordered that the decision of the Board to impose conditions on the respondent's registration be stayed.

- [10] On 9 March 2017 the Tribunal made an order by consent, lifting that stay and inviting the Board to reconsider its decision, as a result of which the respondent entered into certain undertakings to the Board. This matter was originally referred to the Tribunal in 2018, although an amended referral was filed on 5 June 2019. Submissions were promptly filed by both parties and the proceeding was listed for hearing today.

Attitude of the respondent

- [11] When interviewed during the investigation by the health service, the respondent admitted the factual allegations. In a response to the health service investigation, the respondent accepted that his behaviour was highly inappropriate and caused distress and harm to the patient, and that he had failed to ensure that her interests were protected. He had given precedence to his needs over hers. He characterised his actions as providing psychological assistance after hours and claimed that his behaviour was out of character and was caused by his dysregulated emotional state. He described his behaviour as irrational. He acknowledged that his behaviour had breached professional boundaries, and that there were multiple violations of his employer's code of conduct and that of the Australian Psychological Society. He claimed that he was extremely remorseful and that he had insight into the seriousness of his actions.
- [12] In February 2016 the respondent advised that he had commenced a course in ethics and professional issues and had completed an online ethical decision making course, and was willing to accept supervision at work. He asked that the matter be progressed as soon as possible. He has subsequently completed the foreshadowed course and a workshop on safer professional boundaries. Since the respondent's suspension, there have been no other complaints or concerns identified about the respondent's professional behaviour.

Consideration

- [13] The characterisation of the conduct of the respondent as professional misconduct is not contentious. I am conscious of the definition of professional misconduct in the National Law, section 5, and of the content of the Australian Psychological Society Code of Ethics, particularly the propositions that the welfare of the client and the standing of the profession take precedence over the psychologist's self-interest, and that a psychologist must establish and maintain proper professional boundaries with clients. Clearly, the respondent did not do this. It is not appropriate for a psychologist to develop a personal relationship with a patient, even if the relationship does not become intimate. That involves a failure to maintain proper boundaries and some exploitation of the professional relationship in the respondent's interest.
- [14] What makes the conduct in this case more serious is that the respondent persisted in seeking to maintain the inappropriate relationship even when the patient sought to bring it to an end, to the point of pestering the patient and pressuring her to continue contact. This occurred despite clear evidence that it was harmful to her psychological state, which gives the relationship a seriously inappropriate character.
- [15] The Tribunal therefore accepts the submission of the applicant and decides that the respondent has behaved in a way which constitutes professional misconduct by acting in breach of his professional and ethical duties as a psychologist in:

- (a) commencing a treating relationship with a patient in around September 2013 that, from late 2013, developed into a personal relationship in which the respondent engaged in inappropriate text message communications with the patient over an extended period of time and took the patient to the beach to celebrate the respondent's birthday, paying for her lunch, posing for photos and going shopping;
 - (b) did not refer the patient to an alternative treatment provider for her psychological care at any time, despite knowing that the patient had attended for treatment in a vulnerable state;
 - (c) elevated his personal needs above the therapeutic needs of the patient, including, for example, in December 2014 by continuing to message the patient despite her threats of self-harm and evidence of some actual harm if the respondent continued to do so;
 - (d) breached confidentiality of two other patients under his treatment in his communications with the patient, and
 - (e) continued to access the patient's mental health records after the termination of the treating relationship in around March 2015.
- [16] The Tribunal decides also that the respondent has behaved in a way which constitutes unprofessional conduct, in failing to advise the Psychology Board of Australia when he was suspended from duties pending an investigation into the allegations raised by the patient within seven days, as required by s 131 of the National Law, or at all.
- [17] There are some features of the respondent's conduct, particularly his persistence in the relationship in the face of the patient's desire to end it, which are serious. That serves to distinguish this case from some of those relied on by the respondent, such as *Psychology Board of Australia v Dowell* [2011] QCA 2608, *Nursing and Midwifery Board of Australia v Tainton* [2014] QCAT 161 and *Health Ombudsman v Kimpton* [2018] QCAT 405, although there were other serious features in *Dowell*.
- [18] Ordinarily, the protection of the public would require that the respondent's behaviour result in a period of suspension. Reference may be made to the decisions relied on by the applicant: *Psychology Board of Australia v Garcia* [2015] VCAT 128 at 46, *Healthcare Complaints Commission v Cox* [2019] NSWCATOD 16, *Nursing and Midwifery Board of Australia v Clydesdale* [2013] QCAT 191, and *Psychology Board of Australia v Duangpatra* [2012] QCAT 614. In the last case the conduct, I think, was less serious than in this case.
- [19] There are, however, three factors which also need to be taken into account. First, it is now almost five years since most of this conduct occurred. During that time, the respondent has apparently not engaged in any other questionable conduct, and has undertaken courses relevant to proper behaviour in this area. That suggests a measure of rehabilitation, and bodes well further rehabilitation.
- [20] Second, the respondent has cooperated with investigations into his conduct and has readily made admissions, which also suggests that the prospects of rehabilitation are promising. The aggravating feature referred to in *Psychology Board of Australia v Wakelin* [2014] QCAT 516 is absent.

- [21] Third, because of this conduct, the respondent lost his full-time employment with the health service, and has since then worked only part time as a psychologist, and not at all in that capacity since mid-2017. He has, therefore, already experienced a de facto suspension in his practice.¹ These are all factors relevant to the proper protection of the public in the performance of the Tribunal's role.

Conclusion

- [22] In the circumstances, therefore, the Tribunal decides that the appropriate sanction is that the respondent be reprimanded. It is not relevant to consider suspension of his registration. If he were still registered to practice as a psychologist, the Tribunal would impose a condition that for 12 months, he work as a psychologist only under the supervision and mentoring of an endorsed clinical psychologist, to see the supervisor and mentor at least every 2 weeks, and a condition that during the first six months of his practice as a psychologist, he not treat a patient with borderline personality disorder. In the absence of current registration, however, this will be a matter for the Board if he applied in the future to be registered to practise as a psychologist.
- [23] The other appropriate order is that, until further order, pursuant to s 66(1) of the *Queensland Civil Administrative Tribunal Act 2009* (Qld), publication of (a) the contents of a document or thing filled in or produced to the Tribunal, (b) evidence given before the Tribunal, and (c) any order made or reasons given by the Tribunal is prohibited to the extent that it could identify or lead to the identification of any patient of the respondent. The applicant does not seek an order for costs and there is no reason to depart from the prima facie position under the legislation that each party bear its own costs.

¹ *Psychology Board of Australia v GA* [2014] QCAT 409 at [39], *Nursing and Midwifery Board of Australia v Tainton* [2014] QCAT 161 at [21].