QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Health Ombudsman v Veltmeyer* [2021] QCAT 77
PARTIES:	**HEALTH OMBUDSMAN** (applicant) **v** **MARK ANTHONY VELTMEYER** (respondent)
APPLICATION NO/S:	OCR233-19
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	18 March 2021
HEARING DATE:	16 March 2021
HEARD AT:	Brisbane
DECISION OF:	Judge Allen QC, Deputy President Assisted by: Dr J Cavanagh Dr D Khursandi Mr G Kerridge
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 section 107(3)(c) of the *Health Ombudsman Act* 2013 (Qld), the respondent is required to pay a fine of $15,000 to the applicant within a period of six months.** **4. Each party must bear the party's own costs for the proceeding.**
CATCHWORDS:	PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT AND UNPROFESSIONAL CONDUCT – boundary violation – where the respondent is a general practitioner – where the respondent commenced a relationship with a patient under his care – where the respondent continued to treat the patient during the course of their relationship – where there was inordinate delay in

	the investigation and referral of the matter – where the parties agree as to the characterisation of the conduct and 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, s 226 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 100
	Craig v Medical Board of South Australia (2001) 79 SASR 545 *Health Ombudsman v Gillespie* [2021] QCAT 54 *Health Ombudsman v Upadhyay* [2020] QCAT 163 *Legal Services Commissioner v McLeod* [2020] QCAT 371 *Medical Board of Australia v Martin* [2013] QCAT 376
REPRESENTATION:	
Applicant:	Office of the Health Ombudsman
Respondent:	Moray & Agnew
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] This is a referral of a health service complaint against Mark Anthony Veltmeyer (respondent), pursuant to sections 103(1)(a) and 104 of the *Health Ombudsman Act* 2013 (Qld) (*HO Act*), by the Director of Proceedings on behalf of the Health Ombudsman (applicant). The applicant alleges, in the referral filed 28 June 2019, that the respondent has behaved in a way that constitutes professional misconduct and seeks orders for sanction. The respondent admits all paragraphs of the referral in his response, filed 1 October 2019.

[2] In this matter, the parties have jointly filed and rely upon a Statement of Agreed Facts, and there are no factual issues in dispute. The parties also agree as to the characterisation of the conduct and appropriate orders by way of sanction.

Background

[3] The respondent is 59 years old. He obtained a Bachelor of Medicine / Bachelor of Surgery (MBBS) from the University of Queensland in 1984. He was first registered as a medical practitioner in 1984, and currently holds specialist registration as a general practitioner.

[4] Over the relevant period, the respondent was a registered medical practitioner with the Medical Board of Queensland (2004 – 2010) and then a registered health practitioner with the Medical Board of Australia (2010 onwards).

[5] The respondent worked at various hospitals and health facilities in Queensland and the United Kingdom up until the year 1992, when he co-founded a general practice (the Practice).

Conduct

[6] P attended the Practice for general health care from 23 September 1999 to 31 October 2012 and consulted a number of practitioners at the Practice.

[7] The respondent first treated P on 22 September 2004 and remained one of several general practitioners treating P for various medical issues until October 2009. He treated P on around 30 occasions over this period. In February 2008, the respondent prepared a Mental Health Treatment Plan for P and referred her to a psychologist in relation to depression.

[8] In October 2009, P had two consultations with the respondent regarding a tick behind her left ear, during which:

(a) the respondent and P spoke about matters unrelated to her treatment;

(b) the respondent and P expressed a mutual interest in one another;

(c) the respondent told P it would be inappropriate for him to speak with her about anything other than medical matters in a medical setting; and

(d) the respondent told P that if they engaged in any social, dating or romantic meetings, he would not be able to continue being her treating general practitioner.

[9] In November 2009, following those two consultations, the respondent and P commenced a romantic relationship.

[10] During the course of their romantic relationship:

(a) the respondent and P went on an overseas holiday with the respondent's children from his previous marriage (January 2010);

(b) the respondent and P went on an interstate holiday with P's children from her previous marriage (February 2010);

(c) the respondent and P purchased a business together;

(d) the respondent and P jointly purchased a property in which they co-habited with their respective children (May 2010);

(e) the respondent and P maintained a sexual relationship;

(f) the respondent and P operated a joint credit card account; and

(g) the respondent supported P and her children while P undertook study in order to make a vocational change.

[11] The romantic relationship between P and the respondent continued until May 2012, when it ended amicably.

[12] During the course of their relationship, the respondent continued to treat P, and was the only practitioner who treated P during the course of their romantic relationship (apart from two occasions in late 2009).

[13] The respondent treated P on 39 occasions, including:

(a) treating P as her general practitioner in relation to various medical matters;

(b) referring P for consultations with specialists), describing P in these referrals as his wife or partner; and

(c) preparing a Mental Health Treatment Plan for P and referring her to a psychologist in July 2010 in relation to her recent co-habitation and interpersonal conflict with himself, as well as anxiety, fatigue and sleep disorder.

[14] The respondent continued to treat P after the romantic relationship ended in May 2012 until October 2012. During this period, he treated P on 7 occasions, including:

(a) consultations between August and October 2012 in relation to an issue with P's foot;

(b) referring P to an orthopaedic surgeon in August 2012, in which referral he described P as his wife; and

(c) preparing a Mental Health Treatment Plan and referring P to a psychologist in August 2012 in relation to depression, adjustment disorder and anxiety disorder.

[15] In December 2012, P's medical records were transferred to another medical practice.

Characterisation of conduct

[16] Both parties submit that the respondent's conduct should be characterised as "professional misconduct" as defined in limb (b) of the definition of that term in section 5 of the Health Practitioner Regulation National Law (Queensland) (National Law), being:

> unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience.

[17] The Tribunal accepts such submissions.

[18] From 2010 until March 2014, "Good medical practice: a code of conduct for doctors in Australia", published by the Australian Health Practitioner Regulation Agency (AHPRA) and the Medical Board of Australia (Board), provided the relevant code of conduct for medical practitioners and detailed the importance of maintaining professional boundaries with patients and avoiding providing medical care to persons with whom the practitioner had a close personal relationship. Additionally, the "Sexual Boundaries Guidelines for Doctors" provided:

> A breach of sexual boundaries is unethical and unprofessional because it exploits the doctor-patient relationship, undermines the trust that patients (and the community) have in their doctor and may cause profound psychological harm to patients and compromise their medical care…
>
> The doctor-patient relationship is inherently unequal. The patient is often vulnerable. In many clinical situations, the patient may depend emotionally on the doctor. It is an abuse of this power imbalance for a doctor to enter into a sexual relationship with a patient…
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> Trust is the foundation of a good doctor-patient relationship. Patients need to trust that their doctors will act in their best interests. It is a breach of trust for a doctor to

> enter into a sexual relationship with a patient. This breach of trust may impact on the patient's (or other patients') ability to trust other doctors…
>
> A sexual relationship, even if the patient is a consenting adult, may impair the doctor's judgment and compromise the patient's care.

[19] The respondent's conduct was in clear breach of the terms of the applicable code of conduct and guidelines. The respondent's conduct fell substantially below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

[20] Pursuant to s 107(2)(b)(iii) of the *HO Act*, the Tribunal decides that the respondent has behaved in a way that constitutes professional misconduct.

Sanction

[21] The purpose of disciplinary proceedings such as these is to protect the public, not punish the practitioner. As has been noted in many previous decisions, often citing *Craig v Medical Board of South Australia*,[1] the imposition of a disciplinary sanction may serve one or all of the following purposes:

(a) preventing practitioners who are unfit to practise from practising;

(b) securing maintenance of professional standards;

(c) assuring members of the public and the profession that appropriate standards are being maintained and that professional misconduct will not be tolerated;

(d) bringing home to the practitioner the seriousness of their conduct;

(e) deterring the practitioner from any future departures from appropriate standards;

(f) deterring other members of the profession that might be minded to act in a similar way; and

(g) imposing restrictions on the practitioner's right to practise so as to ensure that the public is protected.

[22] The parties jointly submit that appropriate orders by way of sanction are that the respondent be reprimanded and be required to pay a fine of $15,000.

[23] The respondent's professional misconduct is a serious breach of professional boundaries. Although it is not suggested P suffered harm or that her health care was compromised as a consequence of the conduct, she was vulnerable and there was a clear risk that she might be harmed. The respondent's professional misconduct deserves denunciation.

[24] The respondent had no disciplinary or criminal history prior to this conduct.

[25] The respondent showed insight into the wrongness of his conduct by making frank admissions during the course of the investigation of his conduct, engaging in professional education about his ethical obligations as a medical practitioner, particularly in relation to boundaries, including preparation of a personal reflective report, and co-operating in the conduct of these proceedings. The respondent has continued to practise for more than 8 years since the conduct without incident. The

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1 (2001) 79 SASR 545 at 553-555.

Tribunal accepts that preclusion of the respondent from practice is not required to meet any immediate protective purpose.

[26] The recording of a reprimand and imposition of a substantial fine, in the circumstances of this case, adequately address considerations of denunciation, specific and general deterrence and maintenance of professional standards and thus meet the protective purposes of sanction.

[27] There is another feature of this case that means that any preclusion from practice of the respondent by suspension of his registration would be punitive. That is the factor of delay. In addition to the delay between the cessation of the conduct in May 2012 and the notification of the conduct to the applicant on 13 March 2015, there was inordinate delay by the applicant in the investigation and referral of the matter to the Tribunal.

[28] Despite the notification on 13 March 2015, the respondent was not notified of the complaint until on or about 8 August 2016. The respondent made full and frank admissions to the Office of the Health Ombudsman (OHO) in submissions of 11 September 2016 and in an interview with OHO investigators on 11 December 2017. Despite this, the matter was not referred to the Tribunal until 28 June 2019.

[29] The applicant submits in this regard:

> The applicant acknowledges there has been some delay in this matter and regrets that delay. It arose out of a significant backlog of matters in the Office of the Health Ombudsman and the Director of Proceedings.
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> However, the applicant notes the respondent has not been subject to any restrictions on his practice since his misconduct came to light.
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> Further, in terms of disciplinary action regarding his misconduct, the intervening period has allowed the respondent an opportunity to take steps to ameliorate the risk of any future similar conduct. It has allowed him the opportunity to demonstrate to the Tribunal that he has developed insight into his transgressions and benefitted from the salutary effect of the consequences of his actions.
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> Observations of Doyle CJ in *Craig v The Medical Board of South Australia* (sic) on the issue of delay are also noted [at 61]:
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> *'When the purpose of the order is the protection of the public, the main relevance of delay is that the absence of any complaint during the period of the delay might indicate that the public does not require protection from the practitioner. But delay, and the fact that the practitioner may have had the matter hanging over the practitioner's head for some time, has no real weight in deciding what the public interest requires.'*

[30] Insofar as these submissions seek to dismiss or minimise the relevance or significance of delay in the investigation and referral of the matter to the Tribunal in the determination of sanction, they are rejected. The circumstances of the delay referred to in *Craig v Medical Board of South Australia* were quite different to that in this case. In *Craig v Medical Board of South Australia,* the delay referred to was the delay between the unprofessional conduct and the notification of such conduct. Doyle CJ was not referring to any delay in the investigation and referral of the matter after the practitioner became aware of the notification. The difference is important. In an affidavit affirmed on 3 July 2020, the respondent deposes as follows:

> This matter has now been hanging over my head for nearly 4 years. The OHO received the complaint more than 5 years ago. My relationship with (P) ended in approximately May 2012, now over 8 years ago.
>
> …
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> The delay and the approach taken by the OHO throughout the investigation has caused significant stress and frustration to me. I have been unable to fully move on with my life.

[31] The Tribunal accepts the submissions made on behalf of the respondent that the inordinate delay between the notification and the referral to the Tribunal is a significant mitigating factor in determination of appropriate orders by way of sanction.

[32] The Tribunal will not ordinarily depart from orders agreed between the parties unless they fall outside of the permissible range of sanction.[2]

[33] A reprimand is not a trivial penalty and has the potential for serious adverse implications to a professional person. A reprimand is a matter of public record affecting the reputation of a practitioner. As will be further discussed in these reasons, a reprimand remains on the public Register until such time as the National Board determines that it is appropriate that the reprimand be no longer so recorded.

[34] The parties have referred to decisions of the Tribunal including *Health Ombudsman v Upadhyay*[3] in support of their joint submissions as to appropriate orders by way of sanction, including as to the quantum of a fine.

[35] In all the circumstances, the Tribunal accepts that the proposed orders are appropriate.

Recording of the reprimand

[36] The Tribunal has no power to make any order as to how long the reprimand of the respondent remains recorded on the Register.[4] That is a decision for the Board.[5] However, there is no prohibition on the Tribunal expressing a view on such matter, provided it is clear that the ultimate determination of such matter remains solely a matter for the Board.

[37] The respondent seeks that the Tribunal make such a recommendation in this matter. The respondent submits that, had there been a timely investigation and referral of the matter by the applicant, a reprimand would have been made years ago. The inordinate delay by the applicant means that application of an apparent AHPRA policy that, absent a court, tribunal or panel order to the contrary, a reprimand will remain recorded for 5 years,[6] would unduly punish the respondent.

[38] I accept those submissions on behalf of the respondent. I have earlier expressed my grave concerns as to the potential unfairness of application of the apparent AHPRA

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2 *Legal Services Commissioner v McLeod* [2020] QCAT 371 at [31]-[32]; *Medical Board of Australia v Martin* [2013] QCAT 376 at [91]-[93].

3 [2020] QCAT 163.

4 *Health Ombudsman v Gillespie* [2021] QCAT 54.

5 National Law, s 226(3).

6 "AHPRA Management Policy – Regulatory Operations Operational Policy: Removal of reprimands from the national register" and see also "Application to remove reprimand from the National Register", both referred to in *Health Ombudsman v Gillespie* [2021] QCAT 54.

policy[7] and agree that application of such a policy to the respondent would be unfair. I recommend that the Board seriously consider whether it is necessary or appropriate for the reprimand of the respondent to be recorded on the Register for more than two years.

Costs

[39] The parties agreed that there should be no order for costs and, there being no reason to depart from it, the orders of the Tribunal will reflect the default position pursuant to section 100 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld).

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7 *Health Ombudsman v Gillespie* [2021] QCAT 54 at [40]-[41].