

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Nursing and Midwifery Board of Australia v Lockie* [2022]
QCAT 391

PARTIES: **NURSING AND MIDWIFERY BOARD OF
AUSTRALIA**
(applicant)

v

SHIRLEY INGRID LOCKIE
(respondent)

APPLICATION NO/S: OCR154-21

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 21 November 2022

HEARING DATE: 1 June 2022

HEARD AT: Brisbane

DECISION OF: Judicial Member J Robertson

Assisted by:

Ms Laura Dyer
Dr Wendy Grigg
Mr Stephen Lewis

- ORDERS:
- 1. Pursuant to section 196(1)(a)(iii) of the Health Practitioner Regulation National Law (Queensland) (National Law), the respondent has behaved in a way that constitutes professional misconduct.**
 - 2. Pursuant to section 196(2)(a) of the National Law, the respondent is reprimanded.**
 - 3. Pursuant to section 196 (2)(d) of the National Law, the respondent's registration is suspended for a period of 9 months from 12th December 2022.**
 - 4. If either party wishes to make a submission arising out of these reasons, that submission should be made in writing and filed withing 14 days of the date of these orders. If a submission is filed by a party the other party has leave to reply by filing a written submission within 14 days of receipt of the first submission. Subject to any contrary submission from either party, the issue or issues raised shall be dealt with by the**

Tribunal on the papers.

CATCHWORDS:

PROFESSIONS AND TRADES – NURSES – PROFESSIONAL MISCONDUCT – where respondent is a registered nurse with post graduate qualifications – where she works at a practice conducted by her husband a bariatric hernia and general surgeon – where practice is operated through a corporate entity of which the respondent and her husband are the sole directors and shareholders – where she works in the practice as a registered nurse – where respondent issued a prescription to a patient for a S4 anti-biotic in her husband’s name without his knowledge or consent – where she signed his name on the prescription – where during the course of investigations into the practice the respondent informed the OHO and Ahpra falsely that she had not issued the prescription when she knew that she had – where in response to a compulsive notice issued to her to produce documents including prescriptions the respondent failed to produce the relevant prescription – where prior to the referral the respondent admitted that she had been untruthful in her responses to the OHO and Ahpra and that she had failed to produce the prescription in response to the compulsive notice but where she denied that she did so to mislead the Board and Ahpra – where the practice website was redesigned and the respondent was described therein as a “nurse practitioner” a protected accreditation under the National Law where she was not so qualified – where this was brought to her attention on the 30 June 2016 by another practitioner – where the error was not corrected until after the respondent was notified by Ahpra in October 2017 – where the holding out allegation was disputed at the trial by the respondent but the Tribunal rejected her evidence in favour of the evidence of the practitioner who met with her on 30 June 2016 – where respondent continued to deny in her evidence that in failing to produce the prescription in response to the compulsive notice she did so intending to mislead Ahpra – where at end of her cross-examination she admitted that she did so act as part of her overall attempt to cover up her issuing of the prescription

SANCTION – where the respondent has engaged in protracted and multifaceted attempts to mislead regulators – whether she is a fit and proper person now to hold registration – where sanction should emphasize the vital importance of health practitioners being truthful and cooperative with regulators – where respondents conduct stems from a single instance of bad judgment – where respondent otherwise has an exemplary history with no other disciplinary notifications – where respondent

belatedly has apologised for her conduct to her profession and the Tribunal

Health Ombudsman Act 2013 (Qld) s 196

Health Practitioner Regulation National Law (Queensland) s 5, 95, 160

Craig v Medical Board of Australia [2001] 79 SASR 545

Dental Board of Australia v Dhillon [2017] WASAT 20

Health Ombudsman v DKM [2021] QCAT 50

McBride v Walton [1994] NSWCA 199

Medical Board of Australia v Bromeley [2018] QCAT 163

Medical Board of Australia v Davis [2018] QCAT 215

Medical Board of Australia v Dolar [2012] QCAT 271

Medical Board of Australia v Shah [2016] QCAT 158

Psychology Board of Australia v Shahinper [2016] QCAT 259

Solomon v Australian Health Practitioners Regulation Agency [2015] WASC 293

APPEARANCES & REPRESENTATION:

Applicant: C Templeton, instructed by Clayton Utz

Respondent: C Wilson, instructed by Synkronos Legal

REASONS FOR DECISION

- [1] On the first day of June 2022, the Tribunal conducted a hearing into a number of allegations made against Shirley Ingrid Lockie (the respondent) contained in a Referral filed by the Nursing and Midwifery Board of Australia (the Board) with the Tribunal on 2 June 2021.
- [2] By then, a number of critical allegations in the Referral were accepted by the respondent. Ground 1 relates to the consultation with, and issuing to, of a prescription in the name of her husband to a patient LC, in relation to which she now makes certain admissions which are set out below. However Ground 2 (in brief an allegation that during a period of no later than 30 May 2016 to 11 October 2017), she had falsely held herself out on the website of the practice where she then worked, and still works as a “nurse practitioner”, which is a protected accreditation under section 95 of the *Health Practitioner Regulation National Law (Queensland)* (National Law) was still disputed by the respondent; and an essential allegation in Ground 3 (that in a response dated 21 March 2018 to a compulsive notice issued under the law requiring her to produce clinical records relating to a patient (LC) she provided false and/or misleading information); was also in dispute.

- [3] Two witnesses were called by the Board in relation to Ground 2, however, only one, Mr Lee Poole provided direct evidence in relation to the issue in dispute; and the respondent gave evidence and was cross-examined by Mr Templeton on behalf of the Board.
- [4] The hearing on 1 June had been listed in April but could not proceed because of Covid. Just prior to that date, the respondent filed an affidavit which she swore on 4 April 2022.

Background

- [5] The parties have filed a statement of agreed and disputed facts,¹ which succinctly addresses the issues in dispute at the hearing, and the relevant background material.
- [6] The respondent with her husband (through a corporate entity and/or a family trust) is the owner of a medical practice based at Everton Park.
- [7] The practice was established in 2007, and continues. Doctor Lockie is a surgeon specialising in bariatric hernia and general surgery, and operates at a number of hospitals in South-East Queensland. He and the respondent are the sole directors and shareholders of the corporate entity that operates the practice.
- [8] In or about 1991, the respondent obtained registration to practice as a nurse at the Royal Victoria Hospital in Ireland. On or about 11 January 2006 she first obtained registration as a nurse in Australia.
- [9] In or about 2010, she completed a Master of Clinical Science (perioperative nurse – surgical assistant specialising in obesity).
- [10] On 1 July 2010 the respondent gained registration as a registered nurse with the Board under the National Law.
- [11] At times relevant to the conduct the subject of the referral, the respondent:
- (a) was a registered health practitioner, and specifically a registered nurse under the relevant provisions of the National Law;
 - (b) did not hold an endorsement as a “nurse practitioner” under section 95 of the National Law;
 - (c) practised as a nurse at the medical practice of Dr Philip Lockie.
- [12] In her affidavit filed on 4 April 2022, the respondent states that she has been awarded a Master of Nursing (Nurse Practitioner) by Latrobe University. It is common ground that she has applied to be registered as a nurse practitioner, but consideration of her application has been deferred pending the outcome of these proceedings. It is common ground that prior to, and since the health service complaints, the subject of these proceedings, she has no disciplinary history.
- [13] On or about 29 May 2017 the Office of the Health Ombudsman (OHO) received a notification from a confidential notifier which included allegations that the respondent had consulted with the patient in the absence of Dr Lockie, logged into his computer, printed out a prescription for a Schedule 4 drug, and signed it in the name of Dr Lockie.

¹ Hearing Brief (HB) pages 20-25.

- [14] On 11 July 2017, the respondent provided a submission to the OHO in which she denied ever having printed or signed a prescription on behalf of Dr Lockie. On or about 17 August 2017, and on or about 18 September 2017 the OHO received two notifications alleging that the respondent was holding herself out as a nurse practitioner on the website www.drphillockie.com.au.
- [15] The OHO referred the three notifications to the Australian Health Practitioner Regulation Agency (Ahpra).
- [16] On 27 October 2017, the respondent provided a submission to Ahpra in which she stated, inter alia, that she had never signed a prescription on her husband's behalf or otherwise.
- [17] On 8 February 2018 the Board decided to investigate under section 160(1)(a) of the National Law. On 9 March 2018 a notice was issued to the respondent pursuant to clause 1 of schedule 5 to the National Law requiring the production of information (notice).
- [18] On 21 March 2018 the respondent produced documents and gave information in response to the notice.
- [19] On 23 November 2018 the respondent provided a submission to Ahpra in which she stated that she wrote a prescription for a patient (LC) on 22 November 2016 under Dr Lockie's name and signed it as "P Lockie".
- [20] In relation to the three grounds in the referral, the statement of agreed and disputed facts contains a number of relevant admissions. The factual disputes are summarised above.
- [21] The respondent admits that:
- (a) on or about 22 November 2016, she:
 - (i) accessed the clinical records system at her place of employment to enter records into the system in respect of patient LC;
 - (ii) consulted with patient LC and made treatment recommendations;
 - (iii) issued a prescription for Augmentin Duo Forte to patient LC in the name of Dr Lockie;
 - (iv) did not hold registration as a medical practitioner;
 - (v) was not authorised to prescribe S4 medication; and
 - (vi) knew she was not authorised to prescribe medication on behalf of Dr Lockie or at all.
 - (b) the clinical records show that a prescription for Augmentin Duo Forte was issued to the patient LC in the name of Dr Lockie on about 22 November 2016;
 - (c) that the conduct set out in (a)(iii) was contrary to section 146(3) over the *Health (Drugs and Poisons) Regulation 1996 (Qld)*(the Regulation); and
 - (d) the conduct described in (a) above amounts to professional misconduct within the meaning of section 5 of the National Law.

- [22] The respondent does not admit the following allegations as framed in the Referral, that on or about 22 November 2016:
- (a) she inappropriately accessed the clinical records system at her place of employment as Dr Lockie in order to enter clinical records into the system in respect of patient LC when not legally entitled to do so;
 - (b) she falsified and/or inappropriately entered a clinical record of the patient LC purporting to be Dr Lockie, recording that a prescription for Augmentin Duo Forte was issued by Dr Lockie;
 - (c) the treatment recommendations she made in respect of LC were outside her permitted scope of practice;
 - (d) she falsified and/or forged a prescription issued by her to patient LC in the name of and with the purported signature of Dr Lockie for Augmentin Duo Forte; and
 - (e) the conduct the subject of Ground 1 of the referral was in contravention of the provisions of the Board's Code of Professional Conduct for Nurses in Australia 2008 and Code of Ethics for Nurses in Australia 2008. In relation to Ground 2 in the referral, the respondent disputes the factual basis of alleged conduct.
- [23] In relation to Ground 3, the respondent admits that in her submissions to the Board/Ahpra dated 11 July 2017 and 27 October 2017, she contended that she had never purported to issue a prescription for any patient on behalf of Dr Lockie, and that she knew this contention to be false.
- [24] In relation to Ground 3 the respondent admits:
- In her response dated 21 March 2018, in response to a compulsive notice issued to her under clause 1(b) of schedule five of the National Law on 9 March 2018 she did not include a record of the issuance of a prescription for Augmentin Duo Forte tablets in the name of Dr Lockie.
- [25] She disputes that in so doing she intended to mislead the regulator or that her omission was deliberately deceptive.

Resolution of disputed issues

Ground two

- [26] At the outset of the hearing, Counsel for the Board, Mr Templeton, identified that the key issue for decision will be determined by the Tribunal's findings of fact concerning what was said during a meeting between the respondent and Mr Lee Poole in 2016. Both agree that they did indeed meet at the practice at Everton Park on 30 June 2016. Each has a completely different recollection of what was discussed.
- [27] There is really no dispute that in 2014 – 2015, the practice engaged web designers to redesign the practice website. The respondent says this primarily followed the departure of Catherine Smith from the practice in or about May 2014. Ms Smith is (and was then) a nurse practitioner who conducted her own practice, Healthy Weight Clinic, through a collaborative agreement with Dr Lockie from the Everton Park Practice. Again, there is no dispute that Ms Smith departed at a time when her

relationship with the respondent was strained. Each has their own version for their fallout. It is not necessary for the Tribunal to resolve that dispute.

[28] It is helpful to set out the respondent's response to this ground as stated in her affidavit in full:

30. On or about 9 October 2017, I received notification from AHPRA that the title "nurse practitioner" was used in association with my name on the website <http://www.drphillockie.com.au> (practice website). This was the first time that I became aware that the title "nurse practitioner" was being used in association with my name on the practice website.
31. When I was informed that the title "nurse practitioner" was used in association with my name, I was shocked and confused. I appreciated, and continue to appreciate, the significance of the title "nurse practitioner" and the distinction that it has from a registered nurse in the nursing profession.
32. I've never knowingly used the title "nurse practitioner" in association with my name.
33. I did not direct or authorise anyone to use the title "nurse practitioner" in association with my name on the practice website.
34. After becoming aware of the use of the words "nurse practitioner", in association with my name, I called Mr Raymond Strachan of Smart Place, the website developer used by the practice, and requested that he remove all references to "nurse practitioner" in association with my name from the practice website immediately.
35. Mr Ray Strachan called me back approximately 30 minutes later and informed me and I believed that all references to "nurse practitioner" in association with my name on the practice website had been removed.
36. About 11 October 2017, Mr Strachan informed me by email, and I believed, during a website update in or around early 2015, he had taken information from another page on the practice website and used the title "nurse practitioner", in association with my name.
37. On about 13 October 2017, Mr Strachan informed me, again by email, and I believe, that he had not appreciated the significance of the title "nurse practitioner" and thought that it was a general title applicable to all nurses.
38. In or around early 2015, the update of the practice website was primarily focusing on changing the layout, design and colours of the practice website. It was not the intention of the update to review the content written on the practice website, other than to remove Ms Catherine Smith's profile from the practice website because Ms Smith had ceased to be employed in the practice in or around July 2015.
39. Ms Catherine Smith, who held registration as a nurse practitioner, had formerly worked as a contractor at the practice. I believe that Mr Strachan may have seen the title "nurse practitioner" used in association with Mr Smith's name and mistakenly apply the title to references to my name on the practice website.
40. I was involved in the practice website update by considering and conferring with Mr Strachan on Dr Lockie's behalf about the "look"

(layout, design and colours) of the draft pages of the updated practice website. I did not consider or read the content of the updated practice website in any detail because I believe that all the content had merely been transported from the previous version of the practice website.

41. I am unaware of any reference to the title “nurse practitioner” in association with my name on the practice website prior to the update in around early 2015.
42. Following notification by AHPRA on 9 October 2017, all references to the title “nurse practitioner” in association with my name on the practice website had been removed.

[29] Mr Templeton cross examined the respondent at some length about her role in the restructure of the website. The part of the rebuilt webpage that refers to the respondent appears at a number of places in the hearing brief. For example, there is a copy at pages 71 to 72² of the hearing brief. On 71 the respondent is referred under the heading “free consultation”, as a nurse practitioner. These pages were annexed to one of the complaints made about this issue, which was sent to the respondent under cover of letter dated 9 October 2017 from Ahpra.³ At page 72 (an extract from the rebuilt website) it is stated (by reference to the respondent’s role in the practice):

The service is linked to Dr Phil Lockie as a bariatric surgeon by a collaborative agreement as per the nurse practitioner legislation. All weight loss clinic patients are under the management of the nurse practitioner unless related to other health practitioners.

[30] As a result of Mr Templeton’s cross examination (which on this issue focused on email exchanges produced by Bright Yellow (as part of the web design group) as a result of a notice to produce,⁴ it is clear that the respondent was very actively involved in giving instructions to the web designer (Bright Yellow) and the website developer Mr Ray Strachan of Smart Space about the rebuild. However, there is no evidence of any “collaborative agreement” between Dr Lockie and his wife, which contrasts with the collaborative agreement he had with Catherine Smith when her profile appeared under the earlier version of the of the website.⁵

[31] In emails sent to the respondent on 13 October 2017, the web developer Mr Ray Strachan from Smart Space advised the respondent in the following terms:

Hi Shirley

I have reviewed all the content of your site and found another three further pages with reference to nurse practitioner:

1. The weight loss overview page:
 - I’m pretty sure I would (SOC) have put this reference in as I remember adjusting the text of the BMI calculator to link back to the consultation form:
 - I have removed the NP reference.
2. The downloadable resources page:

² See also pages 399-400.

³ Page 63 HB.

⁴ 106-145 HB.

⁵ Page 397 HB.

- this has a link to a PDF document which had Catherine Smith's name on it (I have removed the link for now).
 - this link would have been copied directly across from your old website.
 - I had not previously seen the contents of this document.
3. Healthy weight clinic (not published):
- this was last updated 2.5 years ago, although I cannot tell if it was unpublished or not, but it could not have been publicly available in that time.
 - there was a specific mention of having an authorised nurse practitioner although no name was mentioned
 - I have been giving some thought to this issue. I note the following...
 - I was unaware that **nurse practitioner** was a specific job title/role. I thought it was more of a global term.
 - Although I did not write the text at the bottom of the consultation request form, there is a strong possibility I picked up on that and inserted the NP reference beside your name.
 - I can pretty sure (sic) I have done this in at least a couple of instances and possibly in all instances.
 - the **nurse practitioner** term from my point of view is an excellent word for use in the content on the site, of course I was unaware of its real significance, otherwise I would have checked with you about its use.
 - there was no reference to this in your bio, which is one of the reasons I thought it was more of an overarching term, not one with a specific meaning. Please let me know if there is anything further, I can do to help.

[32] The respondent told Mr Templeton that she was responsible for the redesigned website going live (presumably in 2015), but until alerted by Ahpra 11 October 2017, she did not review the website again. As a matter of logic and common sense, and given her a central role in the practice as one of two directors, and given her evidence that Dr Lockie was often away operating, that evidence is hard to accept. However, given that the Board has the onus, I am not satisfied that the respondent deliberately acted to have herself described as a nurse practitioner on the rebuilt website in 2015, and that it probably came about as a mistake perpetrated by Mr Strachan.

[33] Mr Poole gave evidence that he met with the respondent at the practice on 30 June 2016. He was then the Director of Nursing at the Office of the Chief Nursing and Midwifery Office, Queensland Health. The respondent accepts that they did meet on that date.

[34] Until the hearing, the only evidence before the Tribunal from Mr Poole was a file note from the senior investigating officer dated 21 February 2018, and a short statutory declaration sworn the following day, which is in these terms:

I had a meeting with Shirley Lockie on 30/6/2016 about a range of matters and that during this meeting I advised that it had come to my attention that on her website she was named as a nurse practitioner which she is not. I advise that this could be seen as a holding out offence and requested that she amend. Shirley stated that this was an oversight and had occurred when they removed a previous employee who had been a nurse practitioner and put Shirley's name in. Shirley stated that she would amend and that it should not be difficult to complete.

- [35] When he gave evidence, he produced contemporaneous notes,⁶ which he says he took on a device during the meeting, and he also produced a series of emails leading to the meeting.⁷
- [36] He says that a PhD research student Erin Conway was present at the meeting as he was interested in accessing the practice data for his study. The respondent has no memory of Mr Conway being there despite the emails indicating that it was her who contacted Mr Conway (and cc'd Mr Poole) on 23 June 2016 to set up the 30 June meeting.
- [37] Mr Poole says that they discussed the many topics referred to in his notes and that the discussion about the designation as a nurse practitioner on the website came up because it had come to his notice and he recalled looking at the website but could not remember when.
- [38] In her cross examination the respondent could not recall discussing many of the topics referred to in the contemporaneous notes, although she could remember discussing "Leonie Valentine" and follow-up with university courses.
- [39] As I have set out above, the respondent's version as to what occurred at the meeting is completely at odds with Mr Poole's evidence. He did not take note of the reference to the discussion about the website because he regarded the matter as ancillary to his purpose for being there, and that the respondent had said that she would "amend".
- [40] Mr Wilson cross-examined him about when he was first informed of the issue by reference to the statement of Ms Smith⁸ who knew Mr Poole through their mutual association with the Australian College of Nurse Practitioners. Ms Smith says Mr Poole was asking her if the respondent was a Nurse Practitioner in 2014. He could not recall. This is before the rebuild of the website, and the inclusion of the descriptor of the respondent as a "nurse practitioner" in a number of places on the website. Mr Poole also conceded it was possible (as Ms Smith alleged), although he could not recall it, that she had emailed him in August 2017 about the respondent (among other things) being referred to as a nurse practitioner on more than one page of the website. The respondent's recollection of the conversation with Mr Poole is set out in paragraphs 43 to 51 of her affidavit. In effect she said he took a very "critical and dismissive" attitude towards her and the discussion was about her using the title "advanced clinical practitioner" below her practice signature. She says that to her recollection is that "it became apparent that he had little interest in discussing research students and only wanted to discuss my role and title used in the practice."

⁶ Exhibit 1.

⁷ Exhibit 3.

⁸ HB pages 685-686.

- [41] I prefer the evidence of Mr Poole about what was said at the meeting to that of the respondent for a number of reasons. Firstly, he was an impressive witness, willing to make concessions in cross examination, and his contemporaneous notes support his version that the meeting was cordial and not as the respondent describes in her affidavit. The contents of the emails between them leading up to the meeting were also in cordial terms and gave no hint of any criticism or concern about the use or otherwise of designations by the respondent.
- [42] Secondly, it is a remarkable coincidence that in Mr Poole's short statutory declaration he records the respondent as saying "this was an oversight and had occurred when they removed a previous employee who had been a nurse practitioner and put Shirley's name in"; which is precisely the reason the respondent now gives which I accept is more likely than not. If he is not being truthful, it is indeed remarkable that he recalls this very excuse in his statutory declaration. Although not particularly significant, the emails between Mr Poole and the respondent prior to their meeting in Exhibit 3 suggest a friendly exchange with no hint of criticism or aggression on Mr Poole's behalf.
- [43] Finally, my conclusions about the respondent's reliability in relation to the key disputed issue in Ground 3 as a matter of logic and common-sense feed into my overall impression of her reliability as a witness generally.

Ground 3

- [44] It follows from my factual findings in relation to Ground 2, that the statement in her solicitor's submission to Ahpra dated 27 October 2017, that prior to the Ahpra letter of 9 October 2017 she was unaware that she was being described as a nurse practitioner on the practice website was false.
- [45] As set out above, she admits that in her response dated 21 March 2018 to a compulsive notice under section 1(b) of Schedule 5 of the National Law, which referred to clinical notes relating to LC, and specifically referring to prescriptions, she included a pathology request issued by her on 22 November 2016 at 10:59 am but did not include the record of issuing the prescription to LC at 11:09 am in the name of her husband. She denies generally deliberately misleading or attempting to mislead the Board and/or Ahpra. Her position on this issue is articulated thus in her affidavit:
64. In relation to subparagraph 6(a)(iii) of the Referral in this proceeding, I admit that my response dated 21 March 2018 to a compulsive notice issued by the Board (Ahpra) on 9 March 2018 did not include a record of the issuance of the prescription. This was because I believed that I was only required to provide patient records detailing my interactions with patient LC. Because the prescription was recorded, albeit falsely, as being issued by Dr Lockie, I believed that it was not a record in my possession or control. I held this belief because I knew that Dr Lockie had also received a notice requiring him to produce his patient records concerning patient LC.
 65. My failure to include a record of the prescription in my response to the compulsive notice was not intended to mislead. I sincerely regret that my response to the compulsive notice did not include a record of the issuance of the prescription.

- [46] In her cross-examination she acknowledged, as she had to, that to issue the prescription to LC on 22 November 2016, she had to logout of the software program used by the practice called GENIE after issuing the pathology request, and then login using her husband's username and password to enable her to issue the prescription. The prescription she issued and signed is at page 313 of the hearing brief. A prescription issued by Dr Lockie to LC on 24 November 2016 for erythromycin is at page 314 of the hearing brief. When comparisons are made of the signatures, it is clear that she did not attempt to forge his actual signature, however, as he did not know that she did this, and would not have authorised her to sign his name on a prescription, in so signing, she falsified the prescription.
- [47] She knew immediately that what she had done was wrong; beyond her scope of practice as a registered nurse, and she admits her actions in issuing the prescription amounts to professional misconduct.
- [48] Sadly, this competent and obviously intelligent person, has then proceeded over a number of years to lie to regulators about this conduct. I accept her motivation was because she felt ashamed, and did not want her husband to know the truth, which of course does not excuse registered health practitioners telling falsehoods to regulators.
- [49] As set out above, her denials about issuing the prescription were withdrawn before the filing of the Referral. Her denials in relation to Ground 3 (relating to the failure to include the prescription in the documents produced as a result of the compulsive notice) were maintained right up to the end of her cross-examination in her evidence to the Tribunal.
- [50] Mr Templeton cross-examined the respondent at some length about the contents of paragraph 64 of her affidavit. Mr Templeton gave her a number of opportunities to retract her evidence, and accept that she had made a deliberate decision not to include the prescription, despite the notice specifically referring to prescriptions. Mr Templeton put to her a number of occasions, that she turned her mind to the decision whether or not to produce a prescription, and had made a conscious decision to admit it from the record she produced.
- [51] There was a period during the questioning when she was clearly uncomfortable and upset, and she finally conceded that she did make a conscious decision to omit the prescription. She accepted on a number of occasions that she had unrestricted access to the relevant clinical records covered by the notice. She accepted that she provided the attachment (clinical records re LC) which is attached to the email sent by her then solicitors on 21 March 2018 to AHPRA which did not include the prescription.
- [52] As can be seen from that email, it was sent to Ahpra at 9:55:37 am on 21 March 2018. Mr Templeton asked the respondent about Exhibit 4. That is an email from Ahpra to Dr Lockie (who was under investigation at the time) enclosing the Schedule 5 notice to provide information in relation to LC which was sent to him on 21 March 2018 3:50:00 pm.
- [53] It follows that, contrary to the last sentence in paragraph 64, when her solicitor sent the records that morning, she could not have known that her husband had received a similar notice. Again, after a period of questioning, when she did not answer questions and was evasive, she finally accepted that she had omitted the prescription in the records sent to Ahpra on 21 March 2018, as part of her ongoing attempt to cover up what she had initially done in relation to the issue of the prescription to LC.

Characterisation

- [54] It follows that in relation to the admitted facts in relation to Ground 1, that in acting as she did her conduct was unprofessional and substantially below that expected of a registered nurse of an equivalent level of training and experience.
- [55] In accordance with the factual findings in relation to Ground 2, the respondent knew from 30 June 2016 that she was being described in a number of places on the practice website as a nurse practitioner, and she did not take steps to remedy that until contacted by Ahpra on 9 October 2017. As I have noted, I accept that this occurred as a result of an error made by Mr Strachan. It is difficult to see what she could have gained by this but the fact remains that given my acceptance of Mr Poole's evidence she knew about this from 30 June 2016.
- [56] There is no evidence that she otherwise held herself out as a nurse practitioner for example to patients; nevertheless, it remains serious to use a protected accreditation under the National Law in any circumstance. In my view her proved conduct given its nature amounts to unprofessional conduct.⁹ Once she knew, given her central role in the practice, she should have taken steps to correct the record.
- [57] In relation to Ground 1, the respondent gave an explanation for issuing the prescription in her affidavit and Mr Templeton did not challenge her explanation. LC had been operated on by Dr Lockie on 9 November 2016. She came to the practice on 22 November 2016 for routine follow-up with the dietician. The respondent states in her affidavit:

...The dietician, Loretta Howard, asked me to check LC's wounds. Ms Howard informed me, and I believe that patient LC was very concerned about the state of her abominable wounds. I recall a patient LC presented to me in a very distressed state.

17. I recall that Dr Lockie was not at the practice that day because he was working in Ipswich General Hospital on an operating list. When Dr Lockie works on operating lists, he is generally not contactable throughout the day and does not return to the practice after completing his work at the hospital.

18. I attended patient LC in one of the practice consulting rooms where I removed the dressing from patient LC's wound and noticed immediately that the wound was showing signs of infection. I took a swab of the wound and sent the swab to pathology for organisms and sensitivity examination. I understood from my professional training and experience the prompt treatment of an abdominal wound showing signs of infection is extremely important.

19. Patient LC asked me if there was anything I could do to treat the wound because, she informed me and I believed, she was unable to get an appointment to see her general practitioner. I formed the view that the

⁹ In the original draft sent to the parties, I found that her conduct constituted "unsatisfactory professional performance". I accept Mr Templeton's submission dated 5 August, by reference to the wording of the definitions of both concepts in section 5 of the National Law and *Medical Board of Australia v Davis* [2018] QCAT 215 at [23]-[25] and *Solomon v Australian Health Practitioners Regulation Agency* [2015] WASC 293 at [126]-[127] that 'unprofessional conduct' is the appropriate descriptor for the conduct proved in relation to Ground 2.

appropriate medical intervention would be for patient LC to be administered a broad-spectrum antibiotic.

20. Augmentin Duo Forte is a broad-spectrum antibiotic. I believed that it was the correct treatment for patient LC's wound. I believe this because I knew that it was in keeping with Dr Lockie's normal practice, having seen him prescribe this antibiotic in similar circumstances many times.
21. I accessed the clinical records of the practice and issued a prescription to patient LC for Augmentin Duo Forte in the name of Dr Philip Lockie.
22. I did not attempt to contact Dr Lockie about patient LC prior to or in the immediate aftermath of issuing the prescription.
23. I knew that I was not allowed to issue prescriptions for Augmentin Duo Forte in any circumstances.
20. As soon as I had issued the prescription, I immediately regretted doing so because I realised it was outside my scope of practice and was a serious breach of trust with my supervising surgeon and husband. I decided not to tell anyone about the prescription because I hope that I could leave my decision behind me and that it would go unnoticed.
25. My sole motivation was to provide immediate care to patient LC in circumstances where a wound was infected and causing her extreme distress and she told me, and I believed that her home circumstances may be extremely difficult for her to see her general practitioner in a timely fashion.
26. I have never issued a prescription before or after issuing the prescription to patient LC.

[58] I am satisfied to the requisite standard that in issuing the prescription of Augmentin Duo Forte to patient LC in the name of her husband, falsifying his signature on the prescription, in circumstances in which she knew that she was not authorised to prescribe such medication on Dr Lockie's behalf or at all, which conduct was contrary to section 146(3) of the *Health (Drugs and Poisons) Regulation 1996* (Qld) her actions amount to professional misconduct.

[59] In the statement of agreed and disputed facts,¹⁰ the respondent does not admit that her conduct in Ground 1 was in contravention of the Code of Professional Conduct for Nurses or the Code of Ethics¹¹ for nurses then in force. As set out above, her conduct was contrary to law, and I have found that she falsified her husband's signature on the prescription. In accordance with paragraph 5 of her submission, I am satisfied that she did breach those instruments by breaching the law and acting as she did. The most serious conduct is that reflected in Ground 3, both in her admitted deceptions on two occasions about issuing the prescription, both retracted before the filing of the Referral and her deliberate deception in relation to the notice to produce, which she only accepted at the hearing after being cross-examined.

[60] In relation to the Ground 3, I am satisfied to the requisite standard that in the respondents' submissions to the Board/ Ahpra dated 11 July 2017 and 27 October 2017 she falsely contended that she had never purported to issue a prescription for any patient on behalf of our Dr Lockie. I am satisfied that in her response dated 21

¹⁰ Paragraph [21(e)] page 22 HB.

¹¹ HB page 631.

March 2019 in response to the compulsive notice, she deliberately misled or attempted to mislead the Board/Ahpra as to her issuing of the prescription for Augmentin Duo Forte tablets on 22 November 2016. I am also satisfied to the requisite standard that on or about 27 October 2017, in her submissions to the Board, she falsely asserted that she was unaware of the fact (prior to 9 October 2017) that the website of her employer listed her as a nurse practitioner and that no one had ever raised this issue with her previously.

- [61] All of the applicable Codes refer in various terminology to the need for nurses to behave ethically, honestly and with integrity and to obey the law.
- [62] Tribunals in this state and others have emphasised repeatedly the need for healthcare providers to be honest and frank with regulators.
- [63] In *Psychology Board of Australia v Shahinper* [2016] QCAT 259 (*Shahinper*) the Tribunal wrote at [38]:

In any event, whatever the motivation behind Mr Shahinper’s dishonesty, it remains a serious reflection on his character. As stated by the Honourable James Thomas AM QC in *Psychology Board of Australia v Wakelin*:

The respondent’s dishonest responses to Ahpra in the course of the investigation is in some respects an even more serious reflection on her character (than) the sexual transgression. The character revealed by a practitioner’s actions is obviously a matter with which any disciplinary body must be concerned.

- [64] I accept the submission made by the Board that her first statements about issuing prescriptions on behalf Dr Lockie on two occasions on 11 July 2017 and 27 October 2017, which were retracted on 23 November 2018, her misstatements in relation to the description of her on the website, the omission of the prescription from the documents provided in response to the compulsive notice, indicate that she was prepared to maintain a false position in response to both the OHO and Ahpra over extended periods.
- [65] Her admitted, conduct (and the conduct that I found proved contrary to her evidence), demonstrates that for a lengthy period she was prepared to actively and knowingly mislead her regulatory bodies.
- [66] I agree that her actions had the impact of prolonging the investigation to some extent. Her decision to “come clean” in relation to the July and October submissions about the prescription can be seen as an indication of remorse and insight, however that is undermined by her continued maintenance of her position in relation to the compulsive notice, both in her affidavit and in her evidence, until confronted with overwhelming evidence that her position was untenable. It is also undermined by the findings of fact in relation to Ground 2.
- [67] The Tribunal is satisfied to the requisite standard that her proved conduct when viewed as a whole is conduct that is substantially below the standard reasonably expected of a registered nurse of equivalent training or experience.¹²

SANCTION

¹² Section 5 National Law.

[68] Disciplinary proceedings are protective in nature and not punitive.¹³ The disciplinary jurisdiction of the Tribunal is exercised for the paramount purpose of protecting the health and safety of the public;¹⁴ and the protection of the reputation of the profession in the public mind. This is an aspect of the paramount principle, as the safety and health of the public is enhanced if the public has confidence in a profession which, in this case, stands at the apex of our health system.

[69] In *Craig v Medical Board of Australia* [2001] 79 SASR 545 at [48], the Full Court of South Australia stated:

The public may be protected by preventing a person from practising a profession, by limiting the right to practice; or by making it clear that certain conduct is not acceptable

[70] In the exercise of the protective jurisdiction, it is appropriate for the Tribunal to consider a range of factors to the extent to which these factors arise in the particular circumstances of the case, including:

- (a) the nature and seriousness of the conduct;
- (b) the extent to which the practitioner has shown contrition, insight and/or remorse for the conduct;
- (c) the need for specific and/or general deterrence;
- (d) evidence of rehabilitation and otherwise good character, including co-operation with the disciplinary process and the regulator; and
- (e) other mitigating factors personal to the practitioner.

[71] An assessment of the ongoing risk posed by the practitioner is essential to any determination of sanction.¹⁵ In performing that assessment, the degree to which the practitioner has acquired insight will be relevant.¹⁶

[72] The Board's submission as to sanction¹⁷ is that coupled with the less serious aspects of the respondent's conduct relating to scope of practice issues,¹⁸ the most concerning aspect of the respondent's admitted and/or proved conduct, (covered in all grounds), is her protracted "dishonesty and/or lack of candour and truthfulness". As Mr Templeton submits, the factual findings set out above (based to a significant degree on admissions made after denials sometimes multiple denials), establish that:

- (a) on 11 July 2017 in her submission to the OHO, the respondent denied that she had ever printed or signed a prescription for any patient on behalf of her husband; a contention she later admitted to be untrue and untrue at the time of the submission;
- (b) she made a similar false contention in her submission to Ahpra on 27 October 2017 which she later retracted;

¹³ See for example *Medical Board of Australia v Dolar* [2012] QCAT 271 at [30].

¹⁴ Section 3A National Law.

¹⁵ *Medical Board of Australia v Bromeley* [2018] QCAT 163 at [142].

¹⁶ *Ibid.*

¹⁷ Dated 26 July 2022.

¹⁸ Ground 1 – prescribing outside her scope of practice, and Ground 2 the use of "nurse practitioner" on the practice website.

- (c) in her submission dated 27 October 2017 she falsely (as the Tribunal has found) stated that she was unaware prior to 9 October 2017 that the practice website described her as a “nurse practitioner”; and
- (d) in a response to the Board/Ahpra dated 21 March 2018 she denied deliberately misleading or attempting to mislead by omitting from documents produced by her in response to a compulsive notice (which specifically referred to prescriptions) the prescription issued to LC on 22 November 2016.

[73] I accept the submission by Mr Templeton,¹⁹ that the evidence accepted by the Tribunal indicates that the respondent’s lack of candour was multifaceted and extended over lengthy periods and, in relation to the compulsive notice, continued in her affidavit and in her evidence until her final admission late in her cross examination that omitting the prescription she issued to LC was deliberate and intentional as part of her general attempt to cover up her original misconduct on the 22 November 2016.

[74] Ultimately, it is the Board’s submission, that having regard to the provisions in the Code of Conduct referred to above and the authorities, the protracted nature of the respondent’s lack of candour and truthfulness in her dealings with regulators and extending in important respects into her affidavit and evidence before the Tribunal, should lead the Tribunal to be satisfied that she is not a fit and proper person to hold registration and that part of the sanction should include cancellation of her registration.

[75] By reference to *McBride v Walton* [1994] NSWCA 199 at [34], cited with approval in *Health Ombudsman v DKM* [2021] QCAT 50 at [14], the Board submits that the following matters are relevant to the determination of fitness to practice as at the date of the hearing:

- (a) whether the misconduct can be satisfactorily explained as an error of judgment rather than a defect of character;
- (b) the intrinsic seriousness of the misconduct as it relates to fitness to practice;
- (c) whether the misconduct can be viewed as isolated or atypical or uncharacteristic of her normal qualities of character;
- (d) the underlying qualities of character shown by previous and other conduct; and
- (e) whether her conduct in the interim period demonstrates that public and professional confidence may be reposed in her to uphold the high standards required of her as a registered nurse.

[76] For the reasons set out above, the Board submits that the respondent by her conduct has shown that she is presently not a fit and proper person to hold registration as a registered nurse. As Mr Templeton submits, a period of suspension necessarily carries with it a finding that at the conclusion of that period, the respondent will be a fit and proper person to hold registration. By her proved and admitted conduct, he submits that the Tribunal could not be so satisfied.

[77] The Board, as well as relying on the statement of principle in *Shahinfer* (see [63] above), relies on statements of principle to similar effect in *Dental Board of*

¹⁹ Paragraph [13] of the 26 July submission.

Australia v Dhillon [2017] WASAT 20 at [34]; and statements reflective of the focus in the relevant Codes of Conduct on the need for nurses to behave honestly and ethically, such as *HCCC v Picones* [2018] NSWCATOD 56 at [105]:

A health professional who cannot be trusted to tell the truth presents a substantial risk to the public in any and every health services setting.

- [78] It can be accepted, as Mr Wilson submits on behalf of the respondent,²⁰ that *Dhillon* and *Picones* both involved different and more serious conduct, and where the lack of candour was incidental to that conduct. Mr Templeton does not seek to compare the facts of those cases; rather he relies on these common statements of principle and applies them to the facts of this case.
- [79] The respondent’s primary submission is that in exercising the protective jurisdiction, the Tribunal can adequately reflect principles of specific and general deterrence, and thereby appropriately uphold the reputation of the profession in the public mind, by taking the course the Tribunal took in *Health Ombudsman v Easton (No 2)* [2019] QCAT 258 by imposing a reprimand and a substantial fine.
- [80] It is common ground that the respondent’s decision making on 22 November 2016 involved a serious error of judgment. Although she went beyond her scope of practice, no challenge is made to the clinical decision she made that day in relation to LC. The whole course of misconduct set out in Grounds 1 and 2 follows on from that error of judgment.
- [81] In relation to the “holding out” conduct proved in relation to Ground 2 and her quite elaborate description of the interaction between herself and Mr Poole on 30 June 2016,²¹ in her affidavit (which I have not accepted), as I have noted the description of her as a nurse practitioner in the re-modelled website was not the result of a deliberate decision by her. As my reasons disclose, the description appears to have resulted because of an error made by the web developer. As I have noted, there is no evidence that she attempted in any other way (from 30 June 2016 – 9 October 2017), to hold herself out as a nurse practitioner e.g. to a patient or another professional.
- [82] As I have noted, she elected to deny her actions on the 16th November to regulators for approximately 16 months, probably because of the shame and embarrassment she felt in relation to her actions particularly as they affected her husband. Her conduct in relation to the compulsive notice is inexplicable on the evidence before the Tribunal. As with her denials to OHO and Ahpra, as an intelligent person, it should have been obvious to her that her actions would be uncovered. There is no evidence of any impairment, health or otherwise, that would explain her actions.
- [83] Her decision to dispute the conversation with Mr Poole, and therefore her knowledge from 30 June 2016 of the misdescription of her qualifications on the practice webpage is difficult to understand as well. Once she was advised by Ahpra, the error was corrected. I do not think her version of the conversation given many years after the event, which I have not accepted, is indicative of any serious lack of candour. It is not in the same area of seriousness as her conduct in relation to Ground 3 particularly the compulsive notice denials.

²⁰ Submission dated 22 August 2022.

²¹ See paragraphs [43]-[51] of her affidavit filed 4 April 2022.

- [84] Professor Kesh Baboolal has provided a character reference.²² I accept that he was aware of the nature of the allegations made against the respondent.²³ He has never doubted her honesty or integrity. I do not accept his characterisation of the allegations in Ground 3 as involving merely a significant lack of judgment. I do accept that, apart from this conduct, she has never had any disciplinary notifications or allegations. I accept that she is a caring professional and a strong advocate for her patients.
- [85] In his submission,²⁴ Mr Wilson refers to the completion of his client of two post-graduate qualifications including a Master of Nursing (Nurse Practitioner). The only relevance to the issue of sanction of this factor is that it indicates that, despite the lengthy investigation and disciplinary process leading up to the hearing, she is prepared in a significant way to continue to strive to educate herself as a nurse.
- [86] The lack of candour here is so serious as to call for a period out of practice to reflect the principles set out above. The respondent accepts that she should be reprimanded and a reprimand is not a trivial penalty in itself as it represents a public denouncement of her conduct. The question for the Tribunal is whether the conduct is so serious as to lead it to be satisfied that the respondent is now not a fit and proper person to hold registration. Not without some hesitation I have decided that the evidence is not such as to lead me to conclude to the relevant standard that she presently is unfit to practice.
- [87] In summary the following matters (which are referred to in more detail in these reasons) have persuaded me that a period of suspension would adequately reflect the relevant principles together with the reprimand:
- (a) her lack of candour with regulators emanates from one episode of serious lack of judgment;
 - (b) her otherwise unblemished professional history both before and since (taking into account the Ground 2 finding and the Ground 3 findings in relation to the practice web page and the compulsive notice);
 - (c) the character evidence and the lack of any other evidence of a propensity for dishonesty in relation to the practice of her profession; and
 - (d) her co-operation with the applicant to the extent set out above which saved time and expense.
- [88] In my opinion, the protection of the public and the profession's reputation can be achieved by ordering a period of 9 months suspension of her registration. As suspension was not part of the sanction proposed by Mr Wilson on the respondent's behalf, and to give her a reasonable time to adjust her situation to ensure that the order is given effect, I will allow her a period of 3 weeks from today's date before the suspension comes into effect. Specific deterrence can be emphasised as can general deterrence by such a response, representing, as it does, a strong denunciation of health practitioners who choose to mislead regulators and engage in dishonest conduct for whatever reason.

²² Exhibit 5.

²³ See letter dated 21 March 2022 from her solicitors (part of Ex 5).

²⁴ 22nd August paragraph [7].

- [89] Such a response is in line with decisions such as *Medical Board of Australia v Shah* [2016] QCAT 158. The conduct involved the practitioner inappropriately sending an email to a practitioner treating his now deceased former wife, without her authority and trying to find out information about or involve himself in her treatment regime; accessing his former wife's online medical records without written approval in breach of the Code of Conduct for Doctors in Australia and Queensland Health's information policy of 2005 without reasonable justification; and knowingly making and failing to correct a series of related false statements to Ahpra on three occasions intending and tending to mislead.
- [90] As in this case, the respondent disputed making false statements to Ahpra with the intention to mislead. He was reprimanded and suspended from practice for 6 months. Conditions were also imposed on his registration. As here, the Tribunal made adverse findings of credit against D Shah who gave evidence at the hearing.
- [91] Mr Wilson also refers to *Health Ombudsman v NLM* [2018] QCAT 164. I do not regard that case as comparable. Although the admitted professional misconduct involved dishonesty, there was not dishonesty towards the regulator. The Tribunal found that practitioner had been "frank, honest and co-operative throughout the investigation process and these disciplinary proceedings",²⁵ which is not the case here.

Orders

- [92] The orders are as follows:
- (a) pursuant to section 196(1)(a)(iii) of the National Law, the respondent has behaved in a way that constitutes professional misconduct;
 - (b) pursuant to section 196(2)(a) of the National Law, the respondent is reprimanded;
 - (c) pursuant to section 196(2)(d) of the National Law, the respondent's registration is suspended for a period of 9 months from 12th December 2022; and
 - (d) if either party wishes to make a submission arising out of these reasons, that submission should be made in writing and filed withing 14 days of the date of these orders. If a submission is filed by a party the other party has leave to reply by filing a written submission within 14 days of receipt of the first submission. Subject to any contrary submission from either party, the issue or issues raised shall be dealt with by the Tribunal on the papers.

²⁵ At [62].