

**BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL
TARAIPUINARA WHAKATIKA KAIMAHI HAUORA**

HPDT No: 1038/Med 19/443P

UNDER the Health Practitioners Competence Assurance Act 2003 (“the HPCA Act”)

IN THE MATTER of a disciplinary charge laid against a health practitioner under Part 4 of the HPCA Act

BETWEEN **A PROFESSIONAL CONDUCT COMMITTEE** appointed pursuant to s 71 of the HPCA Act
Applicant

AND **Dr J of X,**
registered Medical Practitioner
Practitioner

Hearing: Held at Auckland on 12 June 2019

Tribunal: Ms M Dew QC (Chair)
Ms S Baddeley, Dr Peter Hadden, Dr Beverley Howcroft, Dr William Rainger (Members)
Ms D Gainey (Executive Officer)

Appearances: Ms J Hughson and Ms H Goodhew for the Professional Conduct Committee
Dr J in person

DECISION OF THE TRIBUNAL

[1] Dr J is a registered medical practitioner practising in []. He has practised in New Zealand for the last 20 years, having graduated with a Bachelor of Medicine and Surgery from an Australian university in the 1990’s.

[2] On 20 March 2018, Dr J was convicted in the Auckland District Court and sentenced on charges of driving with excess breath alcohol and dangerous driving under the Land Transport Act 1998.

[3] The Medical Council was notified of Dr J's convictions, and a Professional Conduct Committee (**PCC**) was appointed by the Medical Council of New Zealand in June 2018. On 11 March 2019, the PCC laid a charge (**Charge**) against Dr J alleging that his convictions reflect adversely on his fitness to practise as a medical practitioner under s100(1)(c) of the HPCA Act.

Charge

[4] The particulars of the Charge are set out below:

“On [] 2018, [], registered medical practitioner of [] (“Dr J”) was convicted in the District Court at Auckland, of two offences each punishable by imprisonment for a term not exceeding three months, pursuant to s 35(1)(b) and s 56(1) of the Land Transport Act 1998 in that:

Particulars of convictions

On [] 2018, at []:

- (a) Dr J drove a motor vehicle on a motorway while the proportion of alcohol in his breath exceeded 400 micrograms of alcohol per litre of breath in that it was 1376 micrograms per litre of breath, this being his second offence against s 56 (1) of the Land Transport Act 1998; and
- (b) On that occasion Dr J drove in a manner which having regard to the circumstances might have been dangerous to the public, this being an offence against s 35(1)(b) of the Land Transport Act 1998.

The convictions either separately or cumulatively reflect adversely on Dr J's fitness to practise as medical practitioner pursuant to s 100(1)(c) of the Act.”

[5] Dr J admits the Charge to the extent that he admits the convictions and their particulars, but he does not admit that the offences he was convicted of reflect adversely on his fitness to practise as a medical practitioner under section 100(1)(c) of the HPCA Act.

[6] The hearing proceeded on the basis of an Agreed Statement of Facts dated 8 May 2019 and an Agreed Bundle of Documents. Dr J also gave oral evidence to the Tribunal.

Agreed Summary of Facts

[7] The summary of the factual background set out below is based on the Agreed Statement of Facts filed with the Tribunal.

[8] Dr J was registered in the General Scope of Practice with the Medical Council of New Zealand on 30 November 2000 and in the Vocational [] Scope of Practice on 1 May 2014. At all relevant times, Dr J has worked as a Consultant [] Specialist for the [].

[9] On [] 2018, Dr J was driving his vehicle north on the [] at [] in []. This vehicle had been voluntarily fitted with an Alcohol Interlock Device at the request of Dr J's wife. Dr J disconnected this device on this instance so that he was able to drive the vehicle.

[10] Dr J was driving at erratic speeds, swerving across all lanes of the motorway, and colliding with left and right barriers between [] and []. Numerous members of the public contacted the Police, concerned that Dr J would collide with other vehicles. Two members of the public blocked Dr J from driving any further and forced him to stop. Dr J's vehicle did not collide with any other vehicles.

[11] Dr J refused to give his details to Police and attempted to walk away before he was detained. The Police noted that he exhibited signs of recent alcohol intake.

[12] Dr J's breath contained 1376 micrograms of alcohol per litre of breath. He offered no explanation to Police for his actions.

[13] Dr J was charged with three offences under the Land Transport Act 1988:

- (a) Driving with excess breath alcohol under section 56(1) of the Land Transport Act 1988;
- (b) Dangerous driving under section 35(1)(b) of the Land Transport Act 1988; and
- (c) Tampering with an alcohol interlock device not being the holder of an alcohol interlock licence under section 55A(1) and 55A(2) of the Land Transport Act 1988.

[14] Dr J entered guilty pleas to the three charges and was convicted and sentenced in the Auckland District Court on [] 2018. This was Dr J's second conviction for a drink drive offence, the first being entered in 2013.

[15] The maximum penalties for the driving offences are three months' imprisonment, a fine of \$4,500 and a mandatory minimum period of disqualification of six months. Dr J was sentenced to 12 months' supervision and was disqualified from driving for seven months. On the charge of dangerous driving, Dr J was also ordered to have a zero-alcohol licence.

[16] The two driving convictions (sections 56(1) and 35(1)(b) of the Land Transport Act) (**2018 driving convictions**) have been referred to the Tribunal as they are qualifying offences under section 100 of the HPCA Act.

[17] Dr J has a history of alcohol-related offending:

- (a) In 2013, he was convicted of driving with excess blood alcohol (244 micrograms of alcohol per 100ml of blood). The PCC investigated this event. The information gathered by the PCC indicated at that time that Dr J's offending was likely to have been an isolated event.
- (b) In [] 2015, Dr J completed diversion after pleading not guilty on a charge of common assault under section 196 of the Crimes Act 1961. The incident occurred in [] 2015, and the person involved was not known to Dr J. Dr J had been drinking alcohol and was intoxicated during this incident. The Court permanently suppressed Dr J's name, occupation and place of work, as well as his wife's name, place of employment, occupation, and the names of his children.
- (c) In [] 2017, Dr J pleaded guilty to a charge of male assaults female under section 194(b) of the Crimes Act 1961. This related to him slapping his wife during an argument in their home on [] 2016. Dr J had been drinking alcohol and was intoxicated during this incident. His wife was also charged in relation to this incident. Dr J was discharged without conviction (as was his wife). The Court made a permanent suppression order in respect of Dr J's name and identifying details.

[18] Following the 2017 Police charge, a PCC was established to consider the [] 2016 assault. The PCC noted that Dr J had been under the monitoring of the Medical Council's Health Committee since 2015 and that his blood tests (monitoring his alcohol use) had been normal for some time. The PCC's recommendation to the Medical Council was that it should counsel Dr J, he should be required to see his GP at least four-monthly, and that he should see his psychologist at least six-monthly.

[19] Dr J had been under monitoring by the Health Committee since September 2015, when concerns were first raised with the Council that alcohol was impacting his health. The Health Committee put in place a monitoring programme that included blood testing and treatment team reports. All of Dr J's blood tests were negative and his treatment team did not express any concerns about him. At the conclusion of the PCC's investigation into the [] 2016 incident, his Health Committee file was closed.

[20] In March 2018, Dr J's Health Committee file was reopened following the [] 2018 drink driving incident. In early 2018, Dr J completed a 14-day residential treatment programme at [] in [], to address his alcohol abuse. Upon completion, Dr J committed to a 24-month continuing care programme.

[21] In April 2018, Dr J was assessed by a dual-diagnosis psychiatrist, Dr []. Relevantly, Dr [] found that Dr J met the criteria for a DSM V diagnosis of Alcohol Use Disorder in the moderately severe range. However, Dr [] also found Dr J was fit to practise as a Consultant [] Specialist with appropriate monitoring.

[22] In May 2018, the Health Committee resolved to put several monitoring measures in place, including random blood testing and random workplace breathalyser testing.

[23] In [] 2018, Dr J relapsed, the day before he was due to return to work. Dr [] assessed Dr J and produced an updated report on 29 July 2018. In this report, Dr [] assessed Dr J as now being in the 'severe range' of his diagnosis of Alcohol Use Disorder, with a poor prognostic profile. Dr []'s report noted that "nothing but total abstinence from alcohol for the remainder of his working life was the only position left for Dr J if he wished to continue practising as a medical doctor".

[24] On 2 August 2018, Dr J informed the Health Committee that he had resigned from the []. On 21 August 2018, the Health Committee requested that Dr J not return to practice until

it had reviewed his health at a meeting in November 2018, following a 3-month period of proven sobriety by way of random blood and breath testing.

[25] On 6 November 2018, the Health Committee reviewed Dr J's success maintaining his sobriety, which included the results of random blood and breath testing. The Health Committee resolved to approve Dr J's return to practice with ongoing monitoring supervised by a Mr []. Dr J advised the Health Committee that he intends to continue consolidating his recovery ahead of a return to work.

[26] In [] 2019, after six months of sobriety, Dr J suffered another relapse which he attributed to ongoing marital problems. He informed Mr [] of this. On 12 March 2019, the Health Committee resolved to request that Dr J not return to work until he had completed a further 6 months of proven sobriety and the Health Committee obtained and considered independent advice on his fitness to practise.

[27] The PCC acknowledges that Dr J has been honest and open with the Health Committee and the Medical Council and has complied with all their directives.

[28] Dr J accepts his convictions will have a negative impact on the trust and confidence which the public is entitled to have in him and in the medical profession.

Relevant law under the HPCA Act – Fitness to Practise

[29] The Charge before the Tribunal is that the [] 2018 driving convictions separately or cumulatively reflect adversely on Dr J's fitness to practice as a medical practitioner under section 100(1)(c) of the HPCA Act. which provides as follows:

[30] There are two elements of a charge under section 100(1)(c) of the HPCA Act:

- (a) Whether the convictions meet the threshold set out in section 100(2)(b), that the convictions have been entered for offences punishable by imprisonment for a term of 3 months or longer. It is not a requirement that the practitioner is sentenced to a term of imprisonment; and
- (b) Whether those convictions reflect adversely on the practitioner's fitness to practise as a medical practitioner.

[31] The burden of proof is on the PCC. The standard of proof is the civil standard of proof; that is proof which satisfies the Tribunal that on the balance of probabilities the particulars of the Charge are more likely than not. The Tribunal must apply a degree of flexibility to the balance of probabilities taking into account the seriousness of the allegation, and the gravity of the consequences flowing from a particular finding.¹

[32] It is well established by this Tribunal that the term “fitness to practise” in the context of section 100(1)(c) of the HPCA Act extends beyond competence issues. It includes conduct that, considered objectively, will have a negative impact on the trust and confidence which the public is entitled to have in the practitioner and the profession as a whole, including conduct which falls below the standard legitimately expected of a member of the relevant profession, whether of a clinical character or not.²

[33] There have been a number of drink-driving cases which have previously come before the Tribunal. Each of these turns on its own facts, and the outcomes (in terms of whether the convictions reflect adversely on fitness to practice) have differed accordingly.

[34] Reviewing the authorities, it is apparent that the circumstances of the offending which led to the convictions is relevant, in particular, whether or not the drink driving occurred in the context of alcohol addiction.

[35] For example, in the *Dr S* decision,³ the practitioner faced a disciplinary charge in relation to self-prescribing to family members, and for convictions for driving with excess breath alcohol and failing to stop for Police. The Tribunal was satisfied that in the context of addiction issues, the convictions reflected adversely on Dr S’s fitness to practise.⁴

[36] Conversely, in *Zauka*,⁵ Dr Zauka faced a charge in the former Medical Practitioners Disciplinary Tribunal for a conviction for driving under the influence of drugs or alcohol. The Tribunal was not satisfied that the conviction reflected adversely on Dr Zauka’s fitness to practise. The main reason for this was that it was Dr Zauka’s first conviction. However, also relevant was the fact that the offending was not part of an on-going pattern of alcohol or drug abuse.

¹ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) at [112].

² See for example, *Golding* 771/Nur15/330P; Mr E 245/Nur09/116P.

³ 994/Med18/417P.

⁴ We note that the inappropriate prescribing was also a relevant factor in that case.

⁵ MPDT 03/103C.

Finding on the Charge

[37] The Tribunal is satisfied the Charge is established and that the [] 2018 convictions reflect adversely on Dr J's fitness to practise as a medical practitioner under the HPCA Act. The evidence submitted in the Agreed Summary of Facts and the Agreed Bundle of Documents establish the Charge as laid.

[38] In relation to the first element of a charge under 100(1)(c), the Tribunal is satisfied that the certified copy of the extract of the permanent court record evidences that Dr J was convicted and sentenced on two charges under section 56(1) and 35(1)(b) of the Land Transport Act. These convictions are qualifying convictions under section 100(2)(b) of the HPCA Act and trigger the operation of section 100(1)(c) of the HPCA Act.

[39] In relation to the second element, the Tribunal is satisfied that the convictions do reflect adversely on Dr J's fitness to practise. The circumstances of Dr J's offending are very serious. His actions were deliberate, in that he disabled the interlock device, and through his actions, he put himself and numerous members of the public at risk. Dr J's alcohol reading of 1376mcg per litre of breath is also very high.⁶

[40] In addition, Dr J's offending occurred in the context of a history of alcohol-related offending and was the result of an alcohol addiction. These factors have been relevant in previous cases as impacting on fitness to practise.⁷ They are clearly relevant in the present case.

[41] In coming to this finding on the Charge, the Tribunal has taken into account the submissions that Dr J made in relation to liability at the hearing. In particular, that his patients were not at risk and his alcohol issues have never affected or impaired him at work.⁸ The Tribunal accepts that there is no evidence that Dr J's patients have ever been directly at risk as a result of his issues with alcohol.

[42] Notwithstanding that, on the balance of probabilities, the Tribunal is satisfied that the convictions separately and cumulatively reflect adversely on Dr J's fitness to practise as a medical practitioner pursuant to section 100(1)(c) of the Act.

⁶ This is more than five times the legal limit of 250mcg.

⁷ For example, *Dr S* and *Zauka* discussed above.

⁸ Transcript of hearing at page 26.

Penalty

[43] Given that the Tribunal is satisfied the Charge is established, it must go on to consider the appropriate penalty under section 101 of the HPCA Act. The penalties may include:

- (a) Cancellation of registration;
- (b) Suspension of registration for a period not exceeding three years;
- (c) An order that the practitioner may only practise with conditions imposed on employment or supervision or otherwise;
- (d) Censure;
- (e) A fine of up to \$30,000; and
- (f) An order that costs of the Tribunal and/or the PCC to be met in part or in whole by the practitioner.

[44] The Tribunal accepts that the appropriate sentencing principles are those contained in *Roberts v Professional Conduct Committee*,⁹ in which Collins J identified the following eight factors as relevant whenever the Tribunal is determining an appropriate penalty. The Tribunal is bound to consider what penalty:

- (a) most appropriately protects the public and deters others;
- (b) facilitates the Tribunal's important role in setting professional standards;
- (c) punishes the practitioner;
- (d) allows for the rehabilitation of the health practitioner;
- (e) promotes consistency with penalties in similar cases;
- (f) reflects the seriousness of the misconduct;

⁹ [2012] NZHC 3354 at [44]-[51].

- (g) is the least restrictive penalty appropriate in the circumstances; and
- (h) looked at overall, is the penalty “fair, reasonable and proportionate in the circumstances.”

[45] Counsel for the PCC submitted that the appropriate penalty in this case is a censure, a period of suspension of three to six months; conditions on Dr J’s return to practise, and a contribution to the costs of the PCC and the Tribunal.

[46] The PCC submitted that these sanctions should be imposed to reflect the gravity of Dr J’s offending, the need for public denunciation of the conduct to maintain professional standards, and the need for deterrence of other health practitioners who might be tempted to engage in similar conduct. The PCC also recognised the need to ensure that Dr J’s medical practice meets professional standards as well as the need to assist Dr J with his rehabilitation.¹⁰

[47] In his evidence, Dr J told the Tribunal about his determination to remain abstinent from alcohol, and the rehabilitation programmes and support he is involved in. He accepted responsibility for his actions, and as such, stated he would accept any decision of the Tribunal.¹¹

[48] Dr J accepted that a censure was appropriate. He informed the Tribunal that he had imposed a condition on himself that he would not work again until he had completed one year of sobriety without relapse. Accordingly, he did not oppose a period of suspension if the Tribunal thought that an appropriate penalty.¹²

[49] In relation to any costs award, Dr J stated that he was struggling financially because he was not working and he had other family related financial commitments, but that he was willing to take out a loan and contribute to the costs incurred by the PCC and the Tribunal.¹³

Comparable cases

[50] The PCC referred the Tribunal to various cases involving drink-driving convictions that it submitted were relevant and provided a measure by which to ensure consistency. We have already referred to the cases of *Dr S* and *Zauka* above, which the PCC referred the Tribunal to

¹⁰ Submissions on behalf of the Professional Conduct Committee on Penalty and Name Suppression at [11].

¹¹ Transcript of hearing page 58.

¹² Transcript of hearing page 57.

¹³ Transcript of hearing pages 57-58.

in relation to liability as well as penalty. We note that in *Zauka*, the Tribunal did not find the charge established. We therefore consider it is of limited assistance in relation to penalty.

[51] In addition to *Dr S*, we have found the *Streat*¹⁴ case of assistance in relation to penalty. In that case, a doctor was convicted of a drink driving charge with a reading of 1336 micrograms per litre. The disciplinary charge before that Tribunal included the conviction and also an aspect of dishonesty in relation to disclosure of her issues with alcohol. Dr Streat was censured, suspended for three months, and had conditions imposed on her return to work.

[52] In considering the appropriate penalty, the Tribunal is also required to consider the aggravating and mitigating factors in this case.

[53] The Tribunal notes the following aggravating factors submitted by the PCC:¹⁵

- (a) *The nature and seriousness of the conduct.* As noted above, Dr J disabled the interlock device so he could drive and drove up the motorway in the late afternoon with a very high level of alcohol in his breath. His driving was so dangerous that members of the public called the Police.
- (b) *History of alcohol-related incidents.* Dr J has a history of alcohol-related offending, as set out above.
- (c) *Risk to the public and himself.* Dr J's driving, the subject of the 2018 driving convictions, posed a serious risk to both Dr J and the public. This is evidenced by the fact that several members of the public reported Dr J's driving to police, and members of the public were also involved in blocking Dr J's car to prevent him from driving.

[54] Dr J gave sworn evidence before the Tribunal as to the circumstances of his offending, his alcoholism and his various efforts at recovery, and his passion for his profession. The Tribunal acknowledges Dr J's honesty and humility in the way he gave his evidence, which has been taken into account in determining the penalty in this case.

¹⁴ 630/Med13/269P.

¹⁵ Submissions on behalf of the Professional Conduct Committee on Penalty and Name Suppression at [13].

[55] The following mitigating factors are relevant in this case and have been taken into account by the Tribunal:

- (a) *Admission of wrongdoing* - Dr J accepted responsibility in the criminal proceedings and willingly engaged with the PCC during its investigation and before the Tribunal, including agreeing to the Agreed Statement of Facts. He has also willingly engaged with the Medical Council's Health Committee in relation to his abuse of alcohol.
- (b) *Personal circumstances* – Following his offending, Dr J has voluntarily engaged with and continues to work with various support groups to address his alcohol abuse.
- (c) *Good character* – Dr J provided the Tribunal with several references from colleagues attesting to his professional abilities as a doctor and his positive personal attributes. The Tribunal has reviewed these references carefully, and acknowledge they are a credit to Dr J. As noted above, the Tribunal accepts there is no evidence that Dr J's patients have ever been directly at risk as a result of his issues with alcohol.
- (d) *Insight and remorse* – Dr J gave evidence before the Tribunal setting out his circumstances and his efforts at rehabilitation since the offending. It is apparent that Dr J has a high degree of insight into his offending and the impact that alcohol has on his life. The Tribunal also accepts that Dr J has significant, genuine remorse about his offending.

Finding on Penalty

[56] The Tribunal has taken into account the relevant sentencing principles, aggravating and mitigating factors and comparable authorities.

[57] We are satisfied that the appropriate penalty in this case is a censure, suspension of his practising certificate for a period of six months, conditions on Dr J's return to practice, and a contribution of 30% to the costs of the PCC and the Tribunal.

[58] The Tribunal has decided that a suspension is appropriate in this case. This is to ensure protection of the public, and to assist with Dr J's rehabilitation. The Tribunal is concerned by

the risk of relapse and considers that a period of suspension is necessary to address those concerns. In addition to assisting Dr J's recovery, the Tribunal considers that suspension will have the effect of maintaining the confidence of the profession and the public at large.

[59] The following conditions are imposed by the Tribunal immediately on Dr J's return to practise:

- (a) A condition for a period of two years prohibiting him from any employment or engagement as a sole charge medical practitioner or in any unsupervised role either in private practice or in a hospital setting.
- (b) A condition for a period of three years, requiring the practitioner to advise all future employers, including any supervisor, Head of Department or Charge Nurse within the organisation in which he is employed or engaged, of the Tribunal's decision and its orders.
- (c) A condition for a period of three years, that the practitioner will remain abstinent from alcohol and other drugs of addiction and will engage with and meet all conditions set by the Medical Council's Health Committee.
- (d) The practitioner will, during this period, work under the professional supervision of a Medical Council approved supervisor and continue to regularly attend alcohol dependency support networks.
- (e) All of the conditions above are to be entered alongside Dr J's registration profile on the Medical Council's website.

Costs

[60] In considering the appropriate quantum of costs, the Tribunal must take into account the need to make a proper contribution towards the costs. In doing so it takes 50% of the total reasonable costs as a starting point, in accordance with the dicta in *Cooray v Preliminary Proceedings Committee*.¹⁶

¹⁶ HC Wellington, AP 23/94, Doogue J, 14 September 1995.

[61] The PCC costs were \$22,706.02 and the Tribunal costs were \$18,799.40 in total. The PCC submitted that the practitioner should contribute between 30 to 50% of the total PCC and Tribunal costs combined.

[62] The Tribunal recognises the cooperation received from Dr J, and in particular that the Charge was able to be dealt with on the basis of an Agreed Summary of Facts. We also acknowledge that Dr J's financial situation has been impacted by his illness. Taking all factors into account, the Tribunal orders that Dr J pay 30% of the total costs, being the sum of \$12,451.62, to be paid half each to the PCC and Tribunal.

Tribunal decision on name suppression

[63] There are presently interim suppression orders in place in relation to Dr J's name and any identifying details, and any details concerning Dr J's health other than the facts surrounding the published convictions. There is also an interim suppression order in place prohibiting publication of the names and identifying details of Dr J's wife and children, to the extent that they may be referred to in the evidence or at the hearing.

[64] Dr J has made an application for permanent suppression of his name and identifying details. In support of this, Dr J submitted that:¹⁷

- (a) He has not caused direct harm to the general public (apart from those close to him);
- (b) Non-publication of his name will reduce his and his family's anxiety and distress and will therefore assist with his recovery process;
- (c) Name suppression would allow him to engage with his University studies without judgement from others, which is also an important part of his recovery.

[65] The PCC does not oppose Dr J's application.

[66] The Tribunal has considered the test related to suppression applications set out in section 95 of the HPCA Act, and the Court of Appeal's statement in *Y v Attorney-General*, that is, given the importance of the principle of open justice, there must be sound reasons for finding

¹⁷ Transcript of hearing pages 74 and 75.

that the presumption favouring publication is displaced.¹⁸ In deciding whether to grant name suppression, as the Court said in *Y v Attorney-General*, a balance must be struck between considerations of open justice and the interests of the applicant.¹⁹

[67] In the present case, the Tribunal has also taken into account the fact that there are permanent suppression orders made by the District Court in place in respect of Dr J's name and identifying particulars in relation to the [] 2015 and the [] 2016 Police charges. The Tribunal is mindful of the need to avoid compromising the integrity of these orders.

[68] The Tribunal considers that in the present case, the presumption of open justice is displaced by the interests of Dr J, and in particular, the risk that publication will have a detrimental impact on Dr J's recovery. We are satisfied that the public interest can be protected by the period of suspension and extensive conditions imposed on Dr J's practice after he resumes practice. We consider this is a final opportunity to allow Dr J to be supported by the Tribunal and the Medical Council to achieve a lasting recovery.

[69] Accordingly, the Tribunal orders that the interim suppression orders in relation to Dr J's name, any identifying details, and any details concerning Dr J's health other than the facts surrounding the convictions will become permanent orders, with the following exceptions:

- (a) Dr J's name can be disclosed to employers as required to give effect to the conditions imposed by the Tribunal; and
- (b) The Medical Council is permitted to publish the conditions imposed by the Tribunal on the Register recording Dr J's registration.

[70] The interim suppression orders relating to Dr J's wife and children will also become permanent suppression orders. There will also be a permanent suppression order relating to the name of the third party who was the complainant in relation to Dr J's assault conviction.

Orders of the Tribunal

[71] The Charge is established under section 100(1)(c) of the HPCA Act.

[72] The penalty orders made against the practitioner by this Tribunal are as follows:

¹⁸ [2016] NZCA 474 at [29].

¹⁹ *Ibid* at [31].

- (a) Censure;
- (b) Suspension of the practitioner's annual practising certificate for a period of six months, to take effect from the date of this decision;
- (c) Conditions on the practitioner's practice to apply from the date of this decision, as follows:
 - (i) A condition for a period of two years, prohibiting him from any employment or engagement as a sole charge medical practitioner or in any unsupervised role either in private practice or in a hospital setting.
 - (ii) A condition for a period of three years, requiring the practitioner to advise all future employers, including any supervisor, Head of Department and Charge Nurse within the organisation in which he is employed or engaged, of the Tribunal's decision and its orders.
 - (iii) A condition for a period of three years, that the practitioner will remain abstinent from alcohol and other drugs of addiction and will engage with and meet all conditions set by the Medical Council's Health Committee.
 - (iv) The practitioner will during this period work under the professional supervision of a Medical Council approved supervisor and continue to regularly attend alcohol dependency support networks.
 - (v) All of the conditions above are to be entered alongside Dr J's registration profile on the Medical Council's website.
- (d) Costs of \$12,451.62 are to be paid by the practitioner, being \$6,225.81 to the PCC and \$6,225.81 to the Tribunal.
- (e) Subject to the suppression orders made above, the Tribunal directs the Executive Officer to publish this decision and a summary on the Tribunal's website. The Tribunal also directs the Executive Officer to request the Medical Council of New Zealand to publish either a summary of, or a reference to, the Tribunal's decision in its principal professional publications to members, in

either case including a reference to the Tribunal's website so as to enable interested parties to access the decision.

DATED at Auckland this 15th day of August 2019

A handwritten signature in blue ink, appearing to read 'MJ Dew', is positioned above the printed name.

MJ Dew QC, Chairperson
Health Practitioners Disciplinary Tribunal