



**NEW ZEALAND
HEALTH PRACTITIONERS
DISCIPLINARY TRIBUNAL**
TARAIPUINARA WHAKATIKA KAIMAHI HAUORA

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BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL

HPDT NO: 1053/Med 19/452P

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

IN THE MATTER of a disciplinary charge laid against a health practitioner
under Section 91 of the Act.

BETWEEN **A PROFESSIONAL CONDUCT COMMITTEE**
appointed by the MEDICAL COUNCIL OF NEW
ZEALAND

Applicant

AND **DR RAKESH KUMAR CHAUDHRY** of
Christchurch, registered medical practitioner

Practitioner

HEARING held at Wellington on 9 September 2019

TRIBUNAL Ms A Douglass (Chair)

Dr B McCulloch, Dr L Wilson, Dr S Purchas, Dr S Ure,
(Members)

Miss D Gainey (Executive Officer)

Ms J Kennedy (Stenographer)

APPEARANCES Ms J Hughson and Ms S Ward counsel for the Professional
Conduct Committee (PCC)

No appearance of or for the Practitioner
Ms F Guy Kidd QC (written submissions)

CONTENTS

| | |
|---|-----------|
| Introduction..... | 3 |
| Hearing..... | 3 |
| Facts | 4 |
| Evidence..... | 10 |
| Relevant law under the HPCA Act..... | 10 |
| Tribunal’s consideration of charge | 11 |
| Penalty..... | 14 |
| Costs | 20 |
| Results and orders..... | 21 |
| Non-publication orders..... | 22 |
| SCHEDULE..... | 23 |

Introduction

- [1] Dr Rakesh Kumar Chawdhry is a registered medical practitioner who formerly practised in Christchurch. Dr Chawdhry emigrated from India to Dunedin in 2003. On 30 August 2010 he became registered within the General scope of practice. On 20 October 2015 Dr Chawdhry was granted full vocational registration in General Practice. He ceased practice on 16 December 2015.
- [2] Dr Chawdhry faces one Charge of professional misconduct pursuant to s100(1)(c) of the Health Practitioners Competence Assurance Act 2003 (the Act) in that he has been convicted of one or more offences that reflect adversely on his fitness to practise as a medical practitioner. On 17 January 2018, Dr Chawdhry was convicted in the Christchurch District Court of 11 charges of indecent assault under s135 of the Crimes Act 1961 and one charge of sexual violation by unlawful sexual connection under s 128B of the Crimes Act 1961.
- [3] These convictions followed a Judge alone trial in the Christchurch District Court. The offending occurred during 2011-2015 while Dr Chawdhry was working as a medical practitioner, initially at Amberley Clinic during 2011 and subsequently at the Riccarton Clinic in Christchurch. The last two offences occurred after he became vocationally registered as a General Practitioner.
- [4] Dr Chawdhry was convicted on 17 January 2018 and subsequently sentenced on 21 February 2018. He also pleaded guilty to two additional charges and was convicted on these, a total of 14 convictions for which he received a total sentence of four years and four months imprisonment. Dr Chawdhry served a third of his sentence in prison and since 15 July 2019 has been on parole.
- [5] The Amended Charge dated 12 August 2019 is in the Schedule to this decision.¹ There are two particulars; firstly with regard to the 17 January 2018 convictions (12 convictions) and secondly, in relation to the subsequent convictions of 27 November 2018 (2 convictions).
- [6] The practitioner admits the Amended Charge.

Hearing

- [7] Neither the practitioner nor his counsel attended the hearing. Dr Chawdhry engaged counsel, Ms Guy Kidd QC in respect to this disciplinary charge with the purpose of assisting in the process of the charge, expediting the hearing process and reducing the costs of the PCC and Tribunal.² Ms Guy Kidd provided written submissions in advance

¹ Document 2, Agreed Bundle of Documents (ABOD) pp1-4.

² Document 5, Submissions on Behalf of Practitioner for Hearing dated 12 August 2019.

of the hearing³ and subsequently on the morning of the hearing filed a brief submission in reply to the PCC's written submissions.⁴

- [8] The hearing proceeded by way of written and oral submissions from Ms Jo Hughson, counsel for the PCC.⁵
- [9] At the commencement of the hearing, the Charge was amended by consent to correct discrepancies found in the certified copies of entry of criminal record.⁶ Counsel helpfully prepared a summary of the amendments and the discrepancies in a "Table of Discrepancies".⁷
- [10] Prior to the hearing, an Agreed Summary of Facts based on the referral of the criminal convictions had been agreed between counsel and signed by Dr Chawdhry.⁸ As set out below, an Agreed Bundle of Documents (ABOD) was also provided for the hearing.
- [11] Dr Chawdhry also filed an affidavit setting out his financial situation and a statement of means in respect of his submission on costs.⁹

Facts

- [12] The hearing proceeded on the basis of an Agreed Summary of Facts (ASOF) as follows:¹⁰

Professional Background

1. *Dr Rakesh Chawdhry (Dr Chawdhry) is and was at all material times a registered medical practitioner.*
2. *Dr Chawdhry graduated with a Bachelor of Medicine and Bachelor of Surgery in 1980 from Guru Govind Singh Medical College, Punjabi. He went on to specialise in internal medicine at Government Medical College Patia La receiving a Doctor of Medicine degree in 1986.*
3. *Dr Chawdhry immigrated to New Zealand in 2003. He gained provisional registration with the Medical Council of New Zealand (the Council) on 13 August 2009. He registered within the General scope of practice on 30 August 2010. From then until October 2015 Dr Chawdhry was practising medicine under the guidance of*

³ Document 5, Submissions on Behalf of Practitioner for Hearing dated 12 August 2019.

⁴ Document 8, Brief Submissions on Behalf of Practitioner in Reply to Submissions on behalf of PCC on Liability and Penalty dated 9 September 2019.

⁵ Document 4, Submissions on Behalf of the Professional Conduct Committee (Liability) dated 3 September 2019. Document 9, Submissions of Professional Conduct Committee on Penalty dated 6 September 2019.

⁶ Agreed Bundle of Documents (ABOD) dated 12 August 2019, Vol One, p 1.

⁷ ABOD, Vol One, p 5.

⁸ Document 1, Agreed Statement of Facts dated 12 August 2019 (ASOF).

⁹ Document 6, Affidavit of Dr Rakesh Chawdhry dated 12 August 2019.

¹⁰ Document 1, Agreed Statement of Facts (Referral of Convictions).

senior medical practitioners as mentors. Dr Chawdhry was granted full vocational registration in General Practice on 20 October 2015, having by then become a fellow of the Royal New Zealand College of General Practitioners.¹¹

4. *Dr Chawdhry has not practised medicine since 16 December 2015, and does not hold an annual practising certificate. He entered into voluntary undertakings with the Council not to practise medicine, on 2 February 2016 and 28 April 2016.¹² A term of the voluntary undertaking was that he relinquished his practising certificate, which he did on 28 April 2016.*
5. *At all relevant times, Dr Chawdhry was employed at the Riccarton Clinic and After-Hours Medical Centre (Christchurch PHO Ltd) (Riccarrton Clinic), as a General Practitioner. He had commenced practice there as an independent contractor in late 2011. From 2012 to 2015 Dr Chawdhry worked at the Riccarton Clinic on a part-time basis (as a contract doctor). From December 2010 to February 2011, Dr Chawdhry was a trainee doctor at the Amberley Clinic, in Canterbury as a pre-requisite to his General Practitioner Education Programme.*
6. *The Riccarton Clinic is a large clinic. The Clinic has both regular clients who are enrolled for primary healthcare, and a drop-in clinic, which is an emergency-based medicine clinic.*

Convictions

Particular 1 – Initial Convictions

7. *On 17 January 2018, Dr Chawdhry was convicted in the District Court at Christchurch of 11 charges of indecent assault under section 135 of the Crimes Act 1961 and one charge of sexual violation by unlawful sexual connection under section 128B of the Crimes Act 1961.*
8. *His convictions relate to offending over a period from April 2012 through to December 2015 and involved 10 male patients aged between 17 and 35 years. All were visiting the Riccarton Clinic for the purposes of a medical examination. Dr Chawdhry was the treating clinician on each of these occasions.*
9. *In broad terms the allegations were that during the course of an intimate genital examination, Dr Chawdhry masturbated the men, and on one occasion placed his finger briefly into the anus of a complainant.*
10. *Dr Chawdhry denied the offending and in his defence, said that any physical touching was for a legitimate medical procedure which he referred to as the “milking technique”. He denied that he had made any sexualised comments or approaches to*

¹¹ FN 1 Agreed Bundle of Documents (ABD), tab 3.

¹² FN 2 ABD, tabs 4 and 5.

any of the complainants and said that his practice of “milking the urethra” had been misconstrued.

11. *The convictions followed guilty findings in a judge alone trial before Judge J A Farish. A copy of the Reasons for Verdict of Judge J A Farish is in the Agreed Bundle of Documents.¹³ During the trial Judge Farish heard expert evidence from three medical practitioners which was largely unchallenged by Dr Chawdhry, as well as evidence from the patients.*
12. *The maximum penalty for an offence under section 135 of the Crimes Act 1961 is a term of imprisonment not exceeding 7 years.¹⁴ The maximum penalty for an offence under section 128B of the Crimes Act 1961 is imprisonment for a term not exceeding 20 years.¹⁵*
13. *On 21 February 2018 Dr Chawdhry was sentenced in the District Court at Christchurch to four years and two months imprisonment and ordered to pay emotional harm payments to the 10 complainants totalling \$22,000. He was given a first strike warning.¹⁶*
14. *A Copy of Dr Chawdhry’s Certified Copy of Extract of the Permanent Court Record dated 3 May 2018, recording his convictions is in the Agreed Bundle of Documents along with a copy of the each of the relevant charging documents.¹⁷ There are errors in the Certified Copy of the Court record as detailed in the table of discrepancies in the Agreed Bundle of Documents.¹⁸*
15. *The facts as found by Judge Farish are outlined in detail in Her Honour’s Reasons for Verdict.¹⁹*
16. *In summary, the Judge found that at the Riccarton Clinic:*
 - (a) *On 1 August 2013, Dr Chawdhry indecently assaulted his patient Mr JA in that he took steps to cause an erection in Mr JA claiming it was necessary for the purpose of obtaining a urethral swab when there was no such requirement or necessity; and as such the causing of an erection did not form a part of any legitimate medical procedure [CRN: 16009008397, ABD tab 8 at [241]-[242]]; and*
 - (b) *On 25 November 2015, Dr Chawdhry indecently assaulted his patient Mr DH in that he attempted to achieve arousal in Mr DH, by stroking Mr DH’s penis and*

¹³ FN 3 ABD, tab 8.

¹⁴ FN 4 ABD tab 14.

¹⁵ FN 5 ABD, tab 14.

¹⁶ FN 6 ABD, tab 10.

¹⁷ FN 7 ABD, tabs 6 and 7.

¹⁸ FN 8 ABD, tab 2.

¹⁹ FN 9 ABD, tab 8.

fondling his testicles. This did not form a part of any legitimate medical procedure [CRN 16009008398, ABD tab 8 at [305],[313]-[314]]; and

- (c) *On 2 December 2015, Dr Chawdhry indecently assaulted his patient Mr RM in that he deliberately caused an erection in Mr RM through the application of cream to the upper thighs, close to the genital area, with no legitimate medical reason to apply cream in such a manner [CRN: 16009008399, ABD tab 8 at [333]-[334]]; and*
- (d) *On 2 July 2014 Dr Chawdhry indecently assaulted his patient Mr JS in that he moved Mr JS's foreskin back and forth a few times and made an attempt to assist Mr JS to be erect which was aborted by Mr JS's intervention, in circumstances which were indecent and outside the process of a justified medical procedure [CRN: 16009009177, ABD tab 8 at [261]]; and*
- (e) *On 8 September 2014 Dr Chawdhry indecently assaulted his patient Mr NL in that he made attempts to cause an unnecessary and medically inappropriate erection claiming it was necessary for the purpose of obtaining an urethral swab [CRN: 16009011601, ABD tab 8 at [286]]; and*
- (f) *On 25 January 2014 Dr Chawdhry indecently assaulted his patient Mr TS in that Dr Chawdhry made efforts to arouse Mr TS which was inappropriate and not part of a genuine medical procedure [CRN: 16009011603, ABD tab 8 at [252]]; and*
- (g) *On 17 March 2012 Dr Chawdhry indecently assaulted his patient Mr BT in that during the course of a digital rectal examination he touched Mr BT's testicles with a sexual motive [CRN: 16009011605, ABD tab 8 at [150]]; and*
- (h) *On 1 August 2013 Dr Chawdhry indecently assaulted his patient Mr JA (being the patient referred to at [16(a)]) in that he touched Mr JA's anus in circumstances of indecency with no medical reason or benefit [CRN: 16009014272, ABD tab 8 at [243]]; and*
- (i) *On 24 September 2014 Dr Chawdhry indecently assaulted his patient Mr ZW in that he made efforts, outside of any legitimate medical purpose, to obtain an erection in Mr ZW following recommending an erection for the purposes of obtaining an urethral swab. He used both hands to fondle Mr ZW's testicles and massage his penis [CRN: 16009014273, ABD tab 8 at [278]]; and*
- (j) *On 20 April 2012 Dr Chawdhry indecently assaulted his patient Mr JS in that he touched Mr JS's penis and testicles in circumstances of indecency [CRN: 16009014274, ABD tab 8 at [169]-[170]]; and*

- (k) *On 15 May 2013 Dr Chawdhry indecently assaulted his patient Mr CC in that he visually inspected Mr CC's anus by parting his buttocks when he had no legitimate medical reason to do so [CRN: 16009016377, ABD tab 8 at [215]].*
17. *Judge Farish also found Dr Chawdhry guilty of sexual violation by unlawful sexual connection in that he sexually violated his patient Mr JS (being the patient referred to at [16(j)] by digitally penetrating Mr JS's anus without his consent [CRN: 16009014275, ABD tab 8 at [171]].*
18. *Judge Farish found that the process that Dr Chawdhry had described as being a "milking technique" was unnecessary and not a medical technique; and therefore Her Honour found that Dr Chawdhry had a sexualised interest in relation to his patients at the time he was undertaking the alleged examinations.²⁰*

Particular 2 – Subsequent convictions

19. *As a result of the publicity surrounding Dr Chawdhry's trial and his sentencing for those 12 convictions (11 for indecent assault and one for sexual violation by unlawful sexual connection) convictions, two additional complainants came forward to Police. Dr Chawdhry was charged with two further charges of indecent assault in relation to those two men, under section 135 of the Crimes Act 1961.*
20. *Dr Chawdhry entered guilty pleas to the two charges on 3 August 2018 in the District Court at Christchurch.*
21. *On 27 November 2018 Dr Chawdhry was sentenced to a further two months imprisonment, to be served cumulatively on the earlier-imposed sentence referred to in paragraph 14. He was also given another first strike warning.²¹*
22. *A copy of Dr Chawdhry's Certified Copy of Extract of the Permanent Court Record dated 12 March 2019, recording those two convictions is in the Agreed Bundle of Documents.²²*
23. *The facts which Dr Chawdhry admitted in the District Court are set out in the Summary of Facts prepared by the New Zealand Police.²³*
24. *In summary:*
- (a) *On or about 21 January 2011 during the course of a medical examination at the Amberley Medical Centre (where he was a trainee doctor) Dr Chawdhry indecently assaulted his patient Mr JH in that he without warning grabbed his*

²⁰ FN 10 ABD tab 10 at [5].

²¹ FN 11 ABD tab 12 2018 at [17].

²² FN 12 ABD, tab 11.

²³ FN 13 ABD, tab 13.

patient's penis and rubbed it up and down attempting to cause erection without medical jurisdiction; and

(b) *Between 1 March 2013 and 30 March 2013, during the course of a medical examination/STI check at the Riccarton Clinic, Dr Chawdhry indecently assaulted his patient Mr DS in that he attempted to create an erection by grabbing Mr DS's penis with one hand and placing his other hand under Mr DS's testicles and rubbed them, without medical justification.*

25. *All of Dr Chawdhry's offending occurred between January 2011 and December 2015.*

Dr Chawdhry's circumstances

26. *Dr Chawdhry was released from Rolleston Prison in Christchurch on 15 July 2019, on Parole.²⁴*

27. *Prior to his release from prison Dr Chawdhry had been engaging in counselling with a registered clinical psychologist, Geoffrey Shirley.*

28. *No evidence of a homosexual or bisexual orientation was discovered in the course of counselling.²⁵*

29. *Dr Chawdhry has denied and continues to deny any sexual motivation in the offending. He acknowledges a sense of entitlement as a doctor leading to the offending occurring. He admits he failed to adequately upskill himself as to New Zealand clinical practice.*

30. *By letter dated 5 April 2019 to the Council, Counsel for Dr Chawdhry advised that Dr Chawdhry does not wish to return to clinical medical practice.*

31. *It is a condition of his parole that he obtains written approval before commencing any employment including voluntary and unpaid work.*

Admission of charge

32. *Dr Chawdhry accepts the accuracy of this Agreed Statement of Facts.*

33. *In addition, Dr Chawdhry admits the Disciplinary Charge (as amended).*

34. *Dr Chawdhry accepts he was convicted of the convictions referred to in the Charge.*

²⁴ FN 14 ABD, tab 16.

²⁵ FN 15 ABD, tab 17.

35. *Dr Chawdhry also admits that each of the offences he was convicted of reflect adversely on his fitness to practise as a medical practitioner under section 100(1)(c) of the Health Practitioners Competence Assurance Act 2003 (the Act).*
36. *Dr Chawdhry accepts also that the convictions as particularised in the disciplinary charge impact on public and professional confidence in the medical profession generally.*

Evidence

[13] Evidence from the PCC is comprised of a number of documents in relation to the criminal charges heard in the Christchurch District Court. These documents provided background to the criminal charges and convictions, reasons of verdict and the sentencing notes from the sentencing District Court Judge. The Agreed Bundle included:

- The certified copy of the entry of the criminal record;
- The Police charging documents;
- Judge Farish’s Reason for Verdict; and
- Sentencing notes (both on 21 February 2018 and 27 November 2018).

[14] There was a Police summary of facts and the New Zealand Parole Board documentation, including the report and letter from Geoffrey Shirley, a clinical psychologist, who had provided a report on Dr Chawdhry’s behalf for the parole hearing.

[15] The PCC provided the Medical Council of New Zealand (Council) statements relevant to sexual offending in this context. These included the Council’s statement *Sexual Boundaries in the Doctor-Patient Relationship: a Resource for Doctors*,²⁶ and *Good Medical Practice*.²⁷

Relevant law under the HPCA Act

[16] The primary purpose of the Tribunal’s disciplinary powers is the protection of the public by the maintenance of professional standards.²⁸ The Tribunal may also take into account the professional and ethical guidelines that relate to the issue of sexual boundaries in the doctor-patient relationship and the relevant standards against which the Tribunal should assess Dr Chawdhry’s conduct.

²⁶ Medical Council of New Zealand *Sexual Boundaries in Doctor-Patient Relationships: A Resource for Doctors* (October 2009).

²⁷ Medical Council of New Zealand *Good Medical Practice* (June 2008 and April 2013).

²⁸ *B v Medical Council* [2005] 3 NZLR 810, Elias J at [15].

[17] A further purpose is to maintain the integrity of the profession. In *Dentice v The Valuers Registration Board*, Eichelbaum CJ described professional disciplinary procedures in the following way:²⁹

Although, in respect of different professions, in the nature of unprofessional or incompetent conduct, which will attract disciplinary charges is variously described, there is a common thread of scope and purpose. Such provisions exist to enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practise the profession in question; to protect both the public and the profession itself against persons unfit to practise; and to enable the profession or calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them; see generally, In *Re A Medical Practitioner* [1959] NZLR 784 at pp 800, 802, 805 and 814.

[18] The burden of proving the Charge is on the PCC.

[19] The standard of proof in professional disciplinary cases is the civil standard, namely on the balance of probabilities, rather than the criminal standard of proof. The gravity of the allegations is an important factor. The greater the gravity of the allegations, the higher the standard of proof.³⁰

[20] The Tribunal accepts that it is now well established that the test for conduct that reflects adversely on a health practitioner's fitness to practise goes far beyond a health practitioner's clinical and technical competence. In reaching the Tribunal's decision on liability the Tribunal is entitled to take into account the Court's sentencing notes when determining fitness to practise and the aggravating features of the offending and victim impact statements in the sentencing notes.³¹

[21] Orders can be made under s100(1)(c) of the Act if the Tribunal, after conducting a hearing on a Charge laid, makes the finding that the practitioner has been convicted of an offence that reflects adversely on his or her fitness to practise. The offence qualifies if it is an offence punishable by imprisonment for a term of three months or longer.

Tribunal's consideration of the Charge

[22] In view of the criminal proceedings which Dr Chawdhry has been subject to, the convictions and the sentence, these have had serious consequences for Dr Chawdhry. Ms Guy Kidd QC for the practitioner acknowledges the seriousness of the offending and confirmed that Dr Chawdhry would abide the decision of the Tribunal in respect of liability and penalty.

²⁹ [1992] 1 NZLR 720, at [74]-[75].

³⁰ *Z v Complaints Assessments Committee* [2009] 1 NZLR 1 (SC).

³¹ *Dunkley* (368/Med11/175P), and *Martin* (45/Nur05/19P).

- [23] Dr Chawdhry’s convictions arose from a series of examinations that he undertook whilst providing GP services at the Riccarton Clinic and Amberley Medical Centre between 2011 and December 2015. The offending related to Dr Chawdhry masturbating male patients, and on one occasion briefly placing his finger in the anus of a male patient during intimate genital examinations. The patients presented with either benign conditions, in some cases were not even there for a genital check-up, or it was described as an “opportunistic ” check for STI (Sexually Transmitted Infection).³²
- [24] Dr Chawdhry defended all the charges. He denied (and continues to deny) any sexual motivation for his offending. In his defence at the criminal trial he claimed that any physical touching was part of a legitimate medical procedure which he referred to as “the milking technique” (described by him as “milking the urethra”). Dr Chawdhry also defended the charge of sexual violation by unlawful sexual connection.
- [25] Expert evidence was given in the course of the criminal trial that established that it was not medically necessary for a patient to be erect for the purpose of obtaining an urethral swab (for the purposes of an STI check), and that the “milking technique” is not used or taught in New Zealand.³³
- [26] The male complainants who were patients of Dr Chawdhry gave evidence at the trial. Dr Chawdhry raised in his defence that he had no specific training on conducting STI checks and was unaware of the inappropriateness of what he was doing.³⁴ Judge Farish was unconvinced by Dr Chawdhry’s explanation as to his lack of knowledge of standard procedures and best practice guidelines.³⁵ Her Honour described Dr Chawdhry’s conduct as follows: ³⁶
- You ... as a doctor and as a treating clinician took opportunities to offend against male patients predominantly by undertaking what was described as a medical procedure called “the milking procedure”. I found during the course of my judgment that that was not a medical procedure and was unnecessary. You were not carrying it out for the purposes of a medical procedure but were taking a sexualised interest in trying to have your patients you were treating obtain an erection.
- [27] In addition to the nine convictions resulting from the above conduct, Dr Chawdhry was convicted of indecent assault for applying cream in a sexualised way to a patient, and encouraging the patient to be erect for the application of cryotherapy on his genitals. He was also convicted of sexual violation for unlawful sexual connection following briefly inserting his finger into a patient’s anus.
- [28] In relation to the 17 January 2018 convictions, Dr Chawdhry was sentenced to four years and two months’ imprisonment and ordered to pay emotional harm payments to each of

³² ABOD p 114 at [6].

³³ ABOD, p 38 at [27].

³⁴ ABOD, p 20 at [63].

³⁵ ABOD, p 20 at [65].

³⁶ ABOD, p 114 at [5].

the 10 victims. There is a District Court suppression order in place in relation to these reparation payments. He was given a “first strike” warning.³⁷

- [29] Following publicity around Dr Chawdhry’s criminal trial, two further patients came forward with allegations of indecent assault. Dr Chawdhry entered guilty pleas to both of these charges. One of these offences took place whilst at the Amberley Medical Centre and the other at the Riccarton Clinic, where all of this offending (save one offence) occurred. Dr Chawdhry was then sentenced to a further two months’ imprisonment to be served cumulatively with his existing sentence. Therefore, he had a total sentence of imprisonment imposed of four years and four months. Reparation payments were paid to both these additional victims.³⁸
- [30] The offence of indecent assault carries a maximum penalty of seven years imprisonment.³⁹ The offence of sexual violation by unlawful connection has a maximum term of imprisonment of 20 years.⁴⁰
- [31] Ms Guy Kidd QC submitted that most of the subjects of the offending were presenting with issues/problems relating to their genitalia such as a urinary tract infection, genital warts, sexually transmitted disease or were undertaking a STI check. There was no finding that the intimate examination of each of the patients was not clinically justified. Rather, the finding was that the intimate examinations were conducted inappropriately and it was the inappropriate method of the examinations which rendered them indecent assaults.
- [32] The Tribunal accepts the PCC’s submission on this point. It is irrelevant that Dr Chawdhry claims that he was not sexually motivated when he committed the offences as there was an intimate examination of each of the patients that was found not to be clinically justified. In the Tribunal’s view Dr Chawdhry used an inappropriate method for clinical examination of patients and in some instances, the patients did not consult him with the purpose of an STI check.
- [33] This offending is extremely serious and the factual background is of considerable concern to the Tribunal. The reasons for the verdict and the notes of the sentencing Judge reflect the seriousness of these offences.
- [34] It is well established that the Council has a zero-tolerance position on doctors who breach sexual boundaries with a patient.⁴¹ The Council standards also require doctors to act honestly and ethically and follow guiding principles with regard to never abusing patients’ trust or the public’s trust in the profession.⁴² Moreover, the NZMA Code of Ethics provides that doctors should ensure that all conduct in the practise of their profession is above reproach. Exploitation of any patient, whether it be physical, sexual,

³⁷ ABOD, p113 at [2].

³⁸ There is a suppression order in place in relation to these reparation payments.

³⁹ Crimes Act 1961, s 135.

⁴⁰ Crimes Act 1961, s 128B.

⁴¹ *Sexual Boundaries in the Doctor-Patient Relationship* (2009).

⁴² *Good Medical Practice* (2008 and 2013).

emotional or financial, is unacceptable and the trust embodied in the doctor-patient relationship must be respected.

[35] The Tribunal finds that these 14 convictions for indecent assault and sexual violation by unlawful sexual connection are qualifying convictions under s100(2)(b) as the convictions have been entered for offences punishable by imprisonment for a term of three months or longer. These convictions and the nature of the offending undoubtedly reflect adversely on Dr Chawdhry's fitness to practise as a medical practitioner. These offences were gross breaches of trust and were repeated with Dr Chawdhry's patients over a sustained period of offending.

[36] The convictions either separately or cumulatively reflect adversely on Dr Chawdhry's fitness to practise as a medical practitioner pursuant to s100(1)(c) of the Act. The Tribunal therefore finds that the Charge is established.

Penalty

Penalty principles

[37] The available penalties under s101 of the Act are: cancellation of registration; suspension for a period not exceeding three years; imposition of conditions on practice for a period not exceeding three years; and censure.⁴³ The Tribunal is dealing with a matter that constitutes an offence for which the health practitioner has been convicted by a court, and therefore the Tribunal must not impose a fine.⁴⁴

[38] The Tribunal's role is to determine the appropriate penalty, given the nature of the conduct, to ensure that both the public interest and the integrity of the profession are maintained. The principles for imposition of a penalty are well established. In *Roberts v PCC*⁴⁵ Collins J summarised the relevant principles as follows:

- (a) The first consideration requires the Tribunal to assess the penalty that most appropriately protects the public.
- (b) The Tribunal must be mindful of the fact that it plays an important role in setting professional standards.
- (c) The penalties imposed by the Tribunal may have a punitive function, although protection of the public and setting professional standards are the most important factors.⁴⁶

⁴³ Health Practitioners Competence Assurance Act 2003, s 101(1).

⁴⁴ Health Practitioners Competence Assurance Act 2003, s 101(2).

⁴⁵ [2012] NZHC 3354 per Collins J at [44]-[51].

⁴⁶ See also *Singh v Director of Proceedings* [2014] NZHC 2848 per Ellis J at [57], noting that Collins J observations in *Roberts* and that punishment may be an incident of the disciplinary exercise.

- (d) Where appropriate, the Tribunal must give consideration to rehabilitating health professionals.
- (e) The Tribunal should strive to ensure that any penalty it imposes is comparable to other penalties imposed in similar circumstances.
- (f) The Tribunal must assess the health professional's behaviour against the spectrum of the sentencing options available.
- (g) The Tribunal should endeavour to impose the penalty that is the least restrictive that can reasonably be imposed in the circumstances.
- (h) The Tribunal must assess whether the penalty imposed is fair, reasonable and proportionate in the circumstances.

[39] In *A v Professional Conduct Committee*, the High Court observed that four points could be expressly, and a fifth impliedly, derived from the authorities.⁴⁷

First, the primary purpose of cancelling or suspending registration is to protect the public, but that 'inevitably imports some punitive element'. Secondly, to cancel is more punitive than to suspend and the choice between the two turns on what is proportionate. Thirdly, to suspend implies the conclusion that cancellation would have been disproportionate. Fourthly, suspension is most apt where there is 'some condition affecting the practitioner's fitness to practise which may or may not be amendable to cure'. Fifthly, and perhaps only implicitly, suspension ought not to be imposed simply to punish.

[40] In *Katamat v Professional Conduct Committee*,⁴⁸ the High Court noted the primary factor to consider:

Of all the factors discussed, the primary factor will be what penalty is required to protect the public and deter similar conduct. The need to punish the practitioner can be considered, but is of secondary importance. The objective seriousness of the misconduct, the need for consistency with past cases, the likelihood of rehabilitation and the need to impose the least restrictive penalty that is appropriate will all be relevant to the inquiry. It bears repeating, however, that the overall decision is ultimately one involving an exercise of discretion.

Penalty Submissions

[41] The PCC submitted that cancellation of the practitioner's registration and censure were appropriate. Ms Guy Kidd QC for the practitioner submitted that Dr Chawdhry would abide the decision of the Tribunal as to penalty and cancellation of his registration is an expected outcome.

⁴⁷ [2008] NZHC 1387 at [81].

⁴⁸ [2012] NZHC 1633 at [53].

[42] The Tribunal is required to balance relevant aggravating and mitigating factors when fixing a proportionate penalty in this case.

[43] The PCC submits that the aggravating features of this case are:

- (a) The offending resulting in the convictions and the convictions themselves are very serious: the seriousness of the offending is reflected in the maximum penalty imposed for indecent assault, being seven years imprisonment.⁴⁹ Sexual violation by unlawful sexual violation has a maximum sentence of 20 years.⁵⁰
- (b) Breach of ethical and professional obligations: Dr Chawdhry's offending occurred within the context of a doctor-patient relationship, in his consultation room and under the guise of a medical examination of the patient. The breach of trust and disregard of fundamental ethical and professional obligations in this case cannot be minimised, and was accordingly considered the predominant aggravating feature by Judge Farish on sentencing.⁵¹
- (c) Vulnerability of the victims: each of Dr Chawdhry's victims attended the Riccarton Clinic (or Amberley Medical Centre) for the purposes of an examination. The victims were all relatively young men (aged between 17 and 35 years). There was a significant power imbalance and Dr Chawdhry took advantage of his position, and his victims' lack of knowledge of the precise nature of the examination required. Only one victim understood at the time that what Dr Chawdhry was doing was wrong.
- (d) Impact of offending on victims: Dr Chawdhry caused immense harm to his victims. Judge Farish summarised the key themes of the victim impact reports as being "*their distress at being sexually abused, their embarrassment of that abuse, and the ongoing effects upon them of that in terms of their distrust of other medical professionals.*"⁵² Victims expressed their anxiety at attending other doctors, and explained that they avoided seeking medical treatment.⁵³
- (e) Elements of premeditation/repetition: the offending occurred over multiple appointments with different men between January 2011 and December 2015. All victims were patients of Dr Chawdhry who had attended the clinic for the purposes of medical examinations. The PCC submits that this offending constitutes a series of repeated and deliberate acts, with sufficient time in between each appointment for Dr Chawdhry to reconsider the appropriateness of his conduct. It is noted the District Court Judge described the conduct as opportunistic as Dr Chawdhry did not know what patient would be coming in, until they arrived.

⁴⁹ FN 17 ABOD, Tab 14.

⁵⁰ FN 18 ABOD, Tab 14.

⁵¹ FN 19 ABD tab 10, at [13].

⁵² Sentencing Notes at [36].

⁵³ Sentencing Notes at [18]-[19] and [30]-[31].

[44] The PCC submitted that the mitigating factors in this case are:

- (a) Dr Chawdhry had no previous criminal history in New Zealand: he had no previous criminal convictions in New Zealand prior to the convictions the Tribunal has considered in this case.
- (b) Cooperation with the PCC: Dr Chawdhry has cooperated with the PCC throughout, including during the investigation and in this prosecution. He indicated at an early stage that he accepted his convictions reflect adversely on his fitness to practise, and the inevitability that his registration will likely be cancelled.
- (c) Dr Chawdhry has expressed remorse for his actions and documents he submitted to the New Zealand Parole Board which are before the Tribunal show that he has taken some steps himself and as part of his sentence, in terms of rehabilitation (counselling). That said, it is concerning that Dr Chawdhry continues to deny any sexual motivation behind his offending. Judge Farish found that there was obvious sexualised intent.⁵⁴ In addition, multiple victims recalled sexualised comments from Dr Chawdhry.
- (d) Dr Chawdhry has accepted that he caused immense harm to his victims. He attributes this to his own self-image and the power imbalance in the doctor-patient relationship,⁵⁵ and he accepts that his behaviour was wrong.⁵⁶

[45] Ms Guy Kidd QC for the practitioner submitted:

- (a) The practitioner denies any sexual motivation in the actions for which he has been convicted. A sexual motivation is not an element of the criminal charges of indecent assault or sexual violation. He acknowledges he failed to educate himself to the accepted practices in New Zealand medicine relating to intimate examinations. That practice differs from his experience and training in India. He was not aware of the content of the Medical Council Statement “Sexual Boundaries in the Doctor-Patient Relationship: A resource for doctors” relating to the mechanisms and expectations around intimate medical examinations.
- (b) When the two charges in the second set of convictions arose Mr Chawdhry immediately pleaded guilty and expressed a desire to meet with the complainants in a restorative justice process and apologise to them. He wrote letters of apology to each of these two complainants.
- (c) While in prison Dr Chawdhry voluntarily chose to engage in counselling to understand what had led to this situation. He realised that he had been dealing with patients with a sense of entitlement stemming from his years of clinical practice

⁵⁴ ABOD Tab 12 at [12].

⁵⁵ ABOD Tab 16 at [11].

⁵⁶ ABOD Tab 16 at [16].

overseas. A report from Geoffrey Shirley, Registered Psychologist dated 27 March 2018 is before this Tribunal in the ABOD.

- (d) In its decision on 17 June 2019 the New Zealand Parole Board speaking of Dr Chawdhry recorded their view “It is clear that there has been a significant change in his thinking”.
- (e) Dr Chawdhry voluntarily continues to have counselling once a month with Mr Shirley.
- (f) Dr Chawdhry apologises to the medical profession for not keeping himself to the standards expected of its members. He feels he has let his colleagues down. He should have been more careful in updating himself on the practice situation in New Zealand and worked within the boundaries and advice of the Medical Council. At no time did he mean to bring disrespect or disrepute to the profession.

Comparable cases

[46] The Tribunal has considered previous Tribunal cases in this context, although each case turns on its own facts.⁵⁷

[47] In many cases the need to consider and explain why lesser options have not been adopted is emphasised. However, the Tribunal must proceed based on what is appropriate having regard to the public interest and the need to maintain public confidence in the profession.⁵⁸

[48] In *Patel v Dentists Disciplinary Tribunal*,⁵⁹ regarding the decision to de-register the practitioner based on the gravity of the offending by the practitioner specifically, Randerson J noted:

... the task of the Tribunal is to balance the nature and gravity of the offences and their bearing on the dentist’s fitness to practice against the need for removal and its consequences to the individual: *Dad v General Dental Council* at 1543. As the Privy Council further observed: [in *Dad*]

Such consequences [cancellation] can properly be regarded as inevitable where the nature or gravity of the offence indicates that a dentist is unfit to practise, that rehabilitation is unlikely and that he must be suspended or have his name erased from the register. In cases of that kind greater weight must be given to the public interest and to the need to maintain public confidence in the profession than to the consequences of the imposition of the penalty to the individual.

⁵⁷ See, for example, *Ahmad* 982/Med18/414P, *Dawson* 1028/Med19/435P, *Spittle* 969/Med17/406P, *Davis* 645/Ost14/284P, *Mr N* 835/Nur16/350P, *Henderson* 406/Nur11/186P and *Lim* 960/Med17/412P.

⁵⁸ *L v Director of Proceedings* (CIV-2008-404-2268, 25 March 2009, Woodhouse J) and *Patel v Dentists Disciplinary Tribunal* (High Court, Auckland, AP77/02 8 October 2002, Randerson J at [31].

⁵⁹ *Ibid* p.18

Penalty decision

- [49] The circumstances of this offending was a gross breach of trust by Dr Chawdhry. The Tribunal accepts the PCC's submission that it was disgraceful conduct by the practitioner. There are a total of 14 criminal convictions with multiple complainants involving 12 patients over a period of five years.
- [50] The Tribunal acknowledges in mitigation that Dr Chawdhry has now accepted that he caused considerable harm to his victims and he accepts that his behaviour was wrong.⁶⁰ However, the seriousness of the criminal offending is such that a penalty short of cancellation of registration would not sufficiently address public safety concerns.
- [51] The Tribunal is cognisant of its role in maintaining professional standards and in the circumstances of this case the protection of the public. Not only do these charges relate to very serious criminal offending, there has been a grave breach of professional standards by Dr Chawdhry. The Medical Council has a "zero-tolerance" policy for any sexual boundary transgression due to the necessity for trust in the doctor-patient relationship, the power imbalance that exists between patient and doctor, the impairment of independent clinical judgement and the potential for harm to the patient.⁶¹
- [52] The Tribunal finds that cancellation and censure are necessary sanctions to mark its condemnation of Dr Chawdhry's conduct and the gravity of the offending.⁶²
- [53] The PCC sought an order with a number of conditions under limiting restoration of registration should Dr Chawdhry seek to reapply for his registration as a medical practitioner. The PCC did not seek to set a date before which the practitioner may not apply for registration under s102(1)(a) but rather sought a number of conditions under s102(1)(b).
- [54] The Tribunal was advised that Dr Chawdhry is now aged 63 years and he has indicated that he has no intention of reapplying for registration with the Medical Council. However, should he seek to do so, the following condition will be ordered for the practitioner to satisfy *before* he may apply for registration again, as follows:

Dr Chawdhry is to undertake, at his own cost, a sexual misconduct assessment test (SMAT) to be arranged in conjunction with the Council's professional standards team before returning to clinical practice.

⁶⁰ ABOD, Tab 16 at [16]

⁶¹ Medical Council of New Zealand *Sexual Boundaries in the Doctor-Patient Relationship* (2009) at [11] - [22].

⁶² See *Dr N*, (above) Ronald Young J at [68].

- [55] Ms Hughson confirmed to the Tribunal that the condition requiring a SMAT does not require a practitioner's consent as do other forms of medical examination or treatment under sections 102(2)(b) and (c) of the Act.
- [56] In addition, the PCC sought conditions that relate to recommencing practice under s 101(1)(c). In summary, the conditions sought were: that Dr Chawdhry be prohibited from treating male patients; that for a period of three years he must comply at his own cost with all directions and recommendations of the Council's professional standards team including its requirement for proof of compliance; and that for the period of three years Dr Chawdhry is to advise future employers of the Tribunal's decision and its orders.
- [57] The Tribunal does not have jurisdiction over these conditions sought by the PCC. If an order is made for cancellation of a practitioner's registration under s 101(1)(a) it may only impose conditions that a person must satisfy *before* the person reappplies for registration again under s102. In any event, The Tribunal considers that should Dr Chawdhry reapply for registration, the Medical Council would be better placed to determine any appropriate conditions, including those conditions sought above, taking into account our decision as well as any intervening events.

Costs

- [58] The starting point is a 50% contribution to costs of the PCC and the Tribunal's costs which can be reduced or increased depending on the circumstances.⁶³
- [59] The estimate of costs for the PCC was \$21,153.85 and the estimate of the Tribunal's costs was \$14,033.92; a total of \$35,187.77.⁶⁴
- [60] The PCC has sought 30% of total reasonable costs would be appropriate in this case.
- [61] The Tribunal received an affidavit of Dr Chawdhry's financial means.⁶⁵ Ms Guy Kidd QC submitted that the practitioner is now aged 63 years. He has not worked since 16 December 2015. He has not been in receipt of any form of Government benefit since that date. He was in prison from January 2018 to July 2019 and his sentence ends on 16 May 2022. He is being financially supported by his wife and anticipates being financially supported by her for the foreseeable future.
- [62] In Ms Guy Kidd's initial submissions she sought a costs order as low as possible so as "not to crush the practitioner as he endeavours to build a life away from his lifelong profession of medicine."⁶⁶ It was submitted that the actual quantum of costs should be no

⁶³ *Coorey v Preliminary Proceedings Committee* AP 23/94, 14 September 1995, Doogue J at [9]; *Vatsyayann v PCC* [2012] NZHC 1138, Priestley J.

⁶⁴ Document 9 Submission of Professional Conduct Committee on Penalty, Appendix One PCC Cost Estimate; Document 10 HPDT Estimate of Costs.

⁶⁵ Document 6 Affidavit of Rakesh Kumar Chawdhry, Practitioner dated 12 August 2019.

⁶⁶ Document Submissions dated 12 August 2019.

more than that awarded in the *Lim* case.⁶⁷ In *Lim*⁶⁸ the medical practitioner also faced a Charge laid under s 100(1)(c) of the Act following criminal convictions for sexual offending. Costs of \$4,380 were awarded and this amount was a 30% contribution by Dr Lim.

- [63] In Ms Guy Kidd QC's final brief submission there was no further response to the PCC's submission seeking a contribution from Dr Chawdhry of 30% of total costs.⁶⁹
- [64] In assessing the appropriate contribution by the practitioner, the Tribunal takes into account Dr Chawdhry admitted the disciplinary charge and reached agreement through his counsel on a summary of facts applicable to the disciplinary charge thereby saving costs of a defended disciplinary hearing. We also take into account Dr Chawdhry's financial circumstances and that he has not worked since 16 December 2015 and is being financially supported by his wife.
- [65] Balancing all of these factors the Tribunal concludes that an order for Dr Chawdhry to pay 30% of the total costs is appropriate in this case. This recognises the cooperation by the practitioner and his current financial means. It is a material reduction on the starting point of 50% contribution to costs and is fair and proportionate to the costs of the hearing.

Result and Orders

[66] The Charge is found to be established pursuant to s100(1)(c) of the Act.

[67] In summary, the Tribunal makes the following orders:

1. An order for cancellation of Dr Chawdhry's registration pursuant to s101(1)(a) of the Act, to take effect immediately from the date of this decision.
2. An order that the following condition must be satisfied should Dr Chawdhry seek to apply for registration again pursuant to s102(1)(b) of the Act as follows:

Dr Chawdhry is to undertake, at his own cost, a sexual misconduct assessment test (SMAT) to be arranged in conjunction with the Council's professional standards team before returning to clinical practice.
3. An order for censure to mark the Tribunal's condemnation of Dr Chawdhry's conduct and the gravity of offending pursuant to s100(d) of the Act.

⁶⁷ Decision of the Tribunal in March 2018.

⁶⁸ *Lim v HPDT* No 960/Med17/412P.

⁶⁹ Document 8 Brief Submissions on Behalf of Practitioner in Reply to Submissions on Behalf of PCC on Liability and on Penalty dated 9 September 2019.

4. An order that Dr Chawdhry pay 30% of the total costs of the PCC and the Tribunal, which amounts to \$10,556.33, pursuant to s 101(1)(f) of the Act.
5. Pursuant to section 157 of the HPCA Act the Tribunal directs the Executive Officer:
 - (1) To publish this decision, and a summary, on the Tribunal’s website; and
 - (2) To request the Medical Council of New Zealand to publish either a summary of, or a reference to, the Tribunal’s decision in its next available publication to members, in either case including a reference to the Tribunal’s website so as to enable interested parties to access the decision.

Non-publication orders

[68] There will be an order for permanent name suppression in relation to all of the complainants under the criminal proceedings. This includes their names, addresses, occupations or identifying particulars of complainants, the reparation payments and also the businesses of [] and [] as set out in the Reasons for Verdict dated 17 January 2018 and the Sentencing Notes dated 21 February 2018.⁷⁰

DATED at this Dunedin this 26th day of November 2019



.....
A Douglass
Chairperson
Health Practitioners Disciplinary Tribunal

⁷⁰ ABOD, Reasons for Verdict p 29-119; Notes of Judge JA Farish on Sentencing, pp113-125.

SCHEDULE**PARTICULARS OF CHARGE**

TAKE NOTICE that a Professional Conduct Committee (**the Committee**) appointed by the Medical Council of New Zealand pursuant to s 71 of the Health Practitioners Competence Assurance Act 2003 (**the Act**) has determined in accordance with s 80(3)(b) of the Act that a Charge be brought against **DR RAKESH KUMAR CHAUDHRY**.

Pursuant to s 91 of the Act the Committee has reason to believe that grounds exist entitling the New Zealand Health Practitioners Disciplinary Tribunal to exercise its powers under s 100 of the Act.

PARTICULARS OF CHARGE (REFERRAL OF CONVICTIONS)

Pursuant to s 81(2) and 91 of the Act the Committee charges that:

1. On 17 January 2018, **RAKESH KUMAR CHAUDHRY**, registered medical practitioner of Christchurch (“Dr Chawdhry”) was convicted in the District Court at Christchurch, of 11 offences each punishable by a term of imprisonment not exceeding 7 years pursuant to section 135 of the Crimes Act 1961, and one offence punishable by a term of imprisonment not exceeding 20 years pursuant to sections 128A(1)(b) and 128B of the Crimes Act 1961 in that:

Particulars of convictions

At the Riccarton Clinic in Christchurch:

- i. On 1 August 2013 Dr Chawdhry indecently assaulted his patient Mr JA; and
- ii. On 25 November 2015 Dr Chawdhry indecently assaulted his patient Mr DH; and
- iii. On 2 December 2015 Dr Chawdhry indecently assaulted his patient Mr RM; and
- iv. On 2 July 2014 Dr Chawdhry indecently assaulted his patient Mr JS; and
- v. On 8 September 2014 Dr Chawdhry indecently assaulted his patient Mr NL; and
- vi. On 25 January 2014 Dr Chawdhry indecently assaulted his patient Mr TS; and
- vii. On 17 March 2012 Dr Chawdhry indecently assaulted his patient Mr BT; and
- viii. On 1 August 2013 Dr Chawdhry indecently assaulted his patient Mr JA (being the patient referred to above at i.); and

- ix. On 24 September 2014 Dr Chawdhry indecently assaulted his patient Mr ZW; and
 - x. On 20 April 2012 Dr Chawdhry indecently assaulted his patient Mr JS; and
 - xi. On 15 May 2013 Dr Chawdhry indecently assaulted his patient Mr CC; and
 - xii. On 20 April 2012 Dr Chawdhry sexually violated by unlawful sexual connection, his patient Mr JS (being the patient referred to above at x.); and
2. On 27 November 2018, Dr Chawdhry was convicted in the District Court at Christchurch, having pleaded guilty to two offences each punishable by imprisonment for a term not exceeding 7 years pursuant to section 135 of the Crimes Act 1961 in that:

Particulars of convictions

- i. On or about 21 January 2011 at the Amberley Medical Centre, Dr Chawdhry indecently assaulted his patient, Mr JH; and
- ii. Between 1 March 2013 and 30 March 2013 at the Riccarton Clinic in Christchurch, Dr Chawdhry indecently assaulted his patient, Mr DS.

The convictions either separately or cumulatively reflect adversely on Dr Chawdhry's fitness to practise as a medical practitioner pursuant to s100(1)(c) of the Act.