



**NEW ZEALAND HEALTH
PRACTITIONERS
DISCIPLINARY TRIBUNAL**

TE RŌPŪ WHAKATIKA
KAIMAHI HAUORA

Level 24, AON Building,
1 Willis Street, Wellington 6011

PO Box 10509, The Terrace,
Wellington 6143, New Zealand

Telephone: +64 4 381 6816
Website: www.hpdt.org.nz

BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL

HPDT NO 1129/Nur20/478P

UNDER the Health Practitioners Competence Assurance Act 2003

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

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

Applicant

AND **ASHWANI AJESHNI LAL** of Auckland,
Enrolled Nurse

Practitioner

HEARING held at Auckland on 20 October 2020

TRIBUNAL Ms Maria Dew QC (Chair)
Ms H Pocknall, Ms K Lamport, Mr N Davis and Ms S Baddeley (Members)
Ms K Davies (Executive Officer)
Ms J Kennedy (Stenographer)

APPEARANCES Mr M McClelland QC and Ms H de Montalk for the PCC
Ms B Johns for the Practitioner

DECISION OF THE TRIBUNAL

9 December 2020

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Introduction

[1] On 2 March 2020, the Professional Conduct Committee (PCC) of the Nursing Council of New Zealand (Nursing Council) laid a disciplinary charge (Charge) with two particulars under section 100(1)(c) of the Health Practitioners Competence Assurance Act 2003 (HPCA Act) against Ms Ashwani Lal, an enrolled nurse of Auckland.

[2] The Charge relates to Ms Lal's convictions in the Pukekohe District Court on 8 August 2017 on two charges of dishonestly and without claim of right, using a document with intent to obtain a pecuniary advantage. The PCC alleges that the convictions either separately or cumulatively reflect adversely on Ms Lal's fitness to practice as an enrolled nurse. The Charge laid by the PCC is set out in full in the appendix to this decision.

[3] Ms Lal admits the Charge and accepts that the convictions reflect adversely on her fitness to practice and that a disciplinary sanction is warranted. Nevertheless, it remains for the Tribunal to determine whether the Charge is established, and if so what, if any, penalty should apply.

[4] The parties produced an Agreed Summary of Facts and the Tribunal heard evidence from Ms Lal and submissions from Ms de Montalk for the PCC and Ms Johns for the Practitioner.

Background facts

[5] The background facts set out below have been taken from the Agreed Summary of Facts dated 17 August 2020 and documents produced.

[6] Ms Lal is an enrolled nurse who holds a Diploma in Enrolled Nursing from the Manukau Institute of Technology. Ms Lal was first registered in the enrolled nurse scope of practice in August 2012.

[7] In 2017 Ms Lal was employed at Pukekohe Rehabilitation and Care Unit, a community hospital for rehabilitation patients known as Pukekohe Hospital.

[8] On 1 August 2017, the New Zealand Police advised the Nursing Council that Ms Lal had been convicted of two charges of dishonestly using a document for pecuniary advantage.

[9] The criminal charges related to the use by Ms Lal of:

- (a) A debit card belonging to Ms N, a [] at Pukekohe Hospital, in the amount of \$291.93 in November 2016; and
- (b) A credit card belonging to Ms Y, a [] at Pukekohe Hospital who [], in the amount of \$1,266.14 in July or August 2016.

[10] The Police were contacted, and Ms Lal was charged with two offences of dishonestly using a document for pecuniary advantage under section 228 of the Crimes Act 1961, to which she pleaded guilty at her first appearance. Offences under section 228 carry a maximum period of imprisonment of a term not exceeding 7 years.

[11] Ms Lal was sentenced to pay reparation to the victims of \$1,558.07 and to complete 100 hours of community work.

[12] The convictions were referred to the PCC who met on 17 January 2020 and determined to refer the matter to this Tribunal.

[13] Appended to the Agreed Statement of Facts was an extract from the permanent court record, setting out the details of the two convictions and sentences imposed, together with the sentencing notes of Judge McGuire.

[14] Ms Lal resigned from her job at Pukekohe Hospital in May 2017 and has not held an Annual Practising Certificate since then.

Relevant law

[15] The Charge is laid under section 100(1)(c) of the HPCA Act. The relevant provisions of section 100 are as follows:

“100 Grounds on which health practitioner may be disciplined

- (1) The Tribunal may make any 1 or more of the orders authorised by section 101 if, after conducting a hearing on a charge laid under section 91 against a health practitioner, it makes 1 or more findings that
 - ...
 - (c) the practitioner has been convicted of an offence that reflects adversely on his or her fitness to practise.
- (2) The Tribunal may make a finding under subsection (1)(c) only if the conviction concerned
 - ...
 - (b) has been entered by any court in New Zealand or elsewhere for an offence punishable by imprisonment for a term of 3 months or longer.

[16] There are two elements to a charge under section 100(1)(c):

- (a) The conviction must meet the threshold in section 100(2)(b) that it relates to an offence 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) The conviction must reflect adversely on the practitioner's fitness to practise as a health practitioner (in this case, as an enrolled nurse).

[17] It is well established by this Tribunal that the term "*fitness to practise*" 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, including conduct which falls below the standard legitimately expected of a member of the relevant profession, whether of a clinical character or not.¹

[18] As such, the Tribunal must consider whether the offending impacts on wider standards of professional conduct and confidence in the profession.²

[19] On numerous occasions, the Tribunal has held that dishonesty convictions reflect adversely on a practitioner's fitness to practice. This has included cases involving fraudulent claims for Government funding, such as *Murdoch*,³ and also cases of theft from individuals. For example, in *Condon* an enrolled nurse had taken and used a credit card belonging to a colleague. The Tribunal said:⁴

"It was accepted by the Tribunal that any breach of trust and especially the dishonesty offences for which Ms Condon has been convicted is conduct which must be regarded as totally unacceptable behaviour for any enrolled nurse. It is also the Tribunal's view that members of the public are entitled to expect to be able to trust and have confidence in the honesty of all members of the nursing profession. In this case, Ms Condon has let both herself down and the public. Accordingly, the Tribunal believes that Ms Condon's actions are ones that reflect adversely on her fitness to practise in the wider sense even if they did not occur in the workplace."

[20] The burden of proof to prove the Charge is on the PCC. The PCC must produce evidence that establishes the facts on which the Charge is based to the appropriate civil standard of proof.

¹ See for example, *Golding* 771/Nur15/330P; *Mr E* 245/Nur09/116P.

² See *Sathe* 568/Den13/246P.

³ *Murdoch* 76/Phys06/45P.

⁴ *Condon* 23/Nur05/13P at [27].

[21] 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 considering the seriousness of the allegations, and the gravity of the consequences flowing from a particular finding.⁵

Consideration of the Charge

[22] The Charge is established. Each conviction meets the section 100(2)(b) of the HPCA Act threshold of an offence punishable by a term of imprisonment of 3 months or longer.

[23] The Tribunal is also satisfied that section 100(1)(c) of the HPCA is met as the convictions, both separately and cumulatively reflect adversely on Ms Lal's fitness to practise as an enrolled nurse. As this Tribunal stated in *Singh*, "*honesty is a vitally important part of being a registered health professional for the protection of the public safety and the maintenance of standards.*"⁶ Taking and using bank cards belonging to a colleague and patient is conduct that falls well below the professional and ethical standards expected of a nurse and inevitably impacts adversely on public trust and confidence in the nursing profession.

Penalty

[24] As the Tribunal is satisfied that 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 the practitioner's registration;
- (b) Suspension of registration for a period not exceeding 3 years;
- (c) An order that the practitioner may only practice with conditions imposed on employment, supervision or otherwise;
- (d) Censure; and
- (e) An order as to costs of the Tribunal and/or the PCC to be met in part or in whole by the practitioner.

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) at [112].

⁶ *Singh* 475/Nur12/212P at [36].

[25] In accordance with section 101(2) of the HPCA Act, a fine may not be imposed in respect of a charge laid under section 100(1)(c).

[26] The Tribunal accepts as the appropriate sentencing principles those contained in *Roberts v Professional Conduct Committee*,⁷ where Collins J identified the following eight factors as relevant whenever the Tribunal is determining an appropriate penalty. In particular, 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;
- (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."

Evidence relating to penalty

[27] Ms Lal gave evidence before the Tribunal regarding matters relevant to penalty. She told the Tribunal that she had wanted to be a nurse since the age of 13 and had trained as a nurse straight out of high school. Her first enrolled nursing job was at Pukekohe Hospital starting in 2012 where she remained for five years until her resignation in 2017.

[28] Ms Lal told the Tribunal about her difficult personal circumstances in 2016, during the period that the offending took place. She said she had married at the age of 19 and there were difficulties in the relationship, both financial and emotional.

[29] In relation to the offending, Ms Lal admits that it was she who first had the idea of using Ms N's bank card, after seeing her wallet at work, but says she couldn't bring herself to go through with it until she discussed it with her husband and after this discussion she felt pressured to act because of their financial problems. She also

⁷ [2012] NZHC 3354 at [44]-[51].

admits using Ms Y's card after seeing it on a bedside cabinet. On both occasions, she used the cards to pay outstanding utility bills. Ms Lal says that during her sentencing, the Judge noted that she had not used the money for "*drugs, clothes, shopping or those kinds of things*".

[30] Ms Lal pleaded guilty to the theft charges immediately. She told the Tribunal she regrets failing to attend a restorative justice conference with Ms N. She says this was not due to a lack of remorse, but rather because she was scared and too embarrassed to meet Ms N face to face. Ms Lal had sent written apologies, via the PCC, to both victims several weeks before this Tribunal hearing and these were produced. During her oral evidence, Ms Lal also made a further apology to Ms N who was attending the hearing.

[31] Ms Lal told the Tribunal she has since separated from her husband, moved into her own accommodation and has received counselling. She is in a new relationship and has supportive friends. Her former parents-in-law continue to be supportive of her and her former father-in-law provided a character reference to the Tribunal as did a close friend.

[32] Since July 2019, Ms Lal has worked for two different employers as a medical practice receptionist. These roles have involved liaising with patients, general administrative tasks and managing payments, cash and banking. In her current role, Ms Lal is sometimes the sole charge receptionist. Ms Lal voluntarily disclosed her theft convictions to both employers. Her current employer is aware she is facing this disciplinary charge and Ms Lal produced a reference from her current employer. This reference confirms the employer is interested in employing Ms Lal as an enrolled nurse in the medical practice in the future and would be willing to support Ms Lal in her return to practise.

[33] Ms Lal expressed to the Tribunal her strong desire to return to clinical practise and that she is willing to accept any supervision and conditions that might be imposed by the Tribunal. She said she has reflected on her ethical obligations under the Nursing Council's Code of Conduct and wants to earn back trust and respect. She would be willing to share her experiences and learnings about trust, integrity and honesty with other trainee nurses. She also hopes eventually to upskill to become a registered nurse.

PCC submissions on penalty

[34] The PCC sought cancellation of the Practitioner's registration, censure and an order for costs. Counsel emphasised that the primary purpose of cancellation was not

to punish but rather to protect the public by upholding professional standards and deterring similar conduct.⁸

[35] The PCC submit that cancellation is warranted in this case because Ms Lal has abused her position as an enrolled nurse and deliberately taken \$1,558.07 for her own use. Counsel acknowledged that the theft from Ms N may not, on its own, have been sufficiently serious to warrant cancellation, but the theft from Ms Y (particularly when combined with the theft from Ms N) was sufficiently serious, because Ms Y was a vulnerable patient.

[36] Counsel for the PCC submit that stealing from a vulnerable patient is the key aggravating factor and the aspect of the case that made cancellation appropriate. There was some discussion during the hearing about the extent of Ms Y's vulnerability. In the Agreed Summary of Facts, Ms Y is described as "[]". Counsel for the PCC advanced a submission that Ms Y was "*highly vulnerable*" based on specific aspects of Ms Y's [] and the level of care she required. Counsel for the Practitioner objected to this submission on the basis that there was no evidential basis. During her evidence, Ms Lal accepted that Ms Y was vulnerable. The Tribunal is satisfied that this was the case. The Tribunal did not find it necessary to make any determination about Ms Y's level of vulnerability.

Practitioner's submissions on penalty

[37] Counsel for the Practitioner submits that cancellation would be wholly disproportionate and is not warranted. It is submitted that censure, conditions (if necessary) and an award of costs against the practitioner is more appropriate. If conditions were deemed necessary, the practitioner submits this could include a period of supervision and attendance at appropriate Nursing Council training courses.

[38] Counsel reminded the Tribunal that the maximum penalty of cancellation should be "*reserved for the worst offenders*"⁹ and it was incumbent on the Tribunal to consider penalties available to it short of removal.¹⁰ It is submitted there is a need to balance the objectives of protection of the public and the maintenance of standards against providing an opportunity for the rehabilitation of the Practitioner. There was also a public interest in not ending the career of a competent practitioner.

⁸ *Professional Conduct Committee v Martin* HC Wellington CIV-2006-485-1461, 27 February 2007 at [23]; *Young v A Professional Conduct Committee* HC Wellington, CIV-2006-485-1002, 1 June 2007 at [30].

⁹ *Roberts v Professional Conduct Committee* [2012] NZHC 3354 at [49].

¹⁰ *Patel v Dentists Disciplinary Tribunal* Auckland HC AP77/02, 8 October 2002 at [31].

[39] Counsel submitted that Ms Lal's oral evidence before the Tribunal provided context for her offending and demonstrated her genuine remorse, insight and the rehabilitation steps she has already undertaken.

Comparable cases

[40] Counsel referred the Tribunal to a substantial number of cases in which health practitioners were disciplined by the Tribunal following convictions for dishonesty. The key cases referred to are discussed below.

[41] Three cases involved registered nurses being struck off.

- (a) In *Wilson*¹¹ a registered nurse was convicted of one count of theft and four counts of loss by deception by a person in a special relationship involving \$2,383.92. Over several months, Mr Wilson had taken petty cash from his workplace and also charged personal items to his employer's accounts at two retailers on 19 separate occasions.
- (b) In *Bain*,¹² the practitioner was convicted after taking money from her employer and on 10 occasions taking money and one piece of jewellery from a number of elderly patients. The thefts totalled \$4,168.11.
- (c) In *Condon*,¹³ an enrolled nurse dishonestly used a colleague's credit card. Her convictions related to 10 transactions totalling \$1,222.47.

[42] In all three cases, the Tribunal was not able to assess remorse or the prospects of rehabilitation because the practitioners did not participate in the disciplinary process. In *Bain*, the practitioner had also communicated to the Tribunal that she did not wish to continue nursing.

[43] In *Harrison*¹⁴ a registered nurse used an ATM card to take \$423.73 from a cognitively impaired patient's bank account for her own use. The nurse was formally cautioned by the police but not charged with an offence. As a result, the corresponding disciplinary charge was laid under sections 100(1)(a) and/or (b) of the HPCA Act. The Tribunal was satisfied that the theft amounted to professional misconduct because "*(i)t is a significant abuse of a nurse's privilege and power to access the property of a patient for her own benefit*".

[44] Mrs Harrison's registration was cancelled. In addition to use of the ATM card, Ms Harrison was also guilty of professional misconduct in making false declarations to

¹¹ *Wilson* 424/Nur11/194P.

¹² *Bain* 387/Nur11/186P.

¹³ *Condon* 23/Nur05/13P.

¹⁴ *Harrison* 867/Nur16/364P.

the Nursing Council and a prospective employer about her criminal history. However, the Tribunal noted that the theft was “*serious malpractice and brings significant discredit to the nursing profession*” and “*in itself, on the basis of other cases, may have been sufficient to justify cancellation of registration*”.¹⁵ Ms Harrison did not participate in the Tribunal process other than to indicate that she did not intend to practice nursing again and she accepted that cancellation was appropriate.

[45] By contrast, in *Kong*,¹⁶ a doctor who was convicted on 16 counts of fraudulently claiming capitation-based funding totalling \$183,000 did not have his registration cancelled. The Tribunal censured the practitioner, suspended him for 12 months and imposed conditions on his practice, taking account of the rehabilitation steps he had taken, his expression of remorse and his guilty plea.

[46] In *Chiew*,¹⁷ a pharmacist had fraudulently claimed funding for repeat prescriptions that had not been dispensed over a six-year period amounting to approximately \$220,000. The practitioner pleaded guilty to the 130 criminal charges laid against him. Despite the conduct being premeditated and persistent over a long period, the Tribunal ordered censure, suspension for nine months and conditions on practice. The practitioner had made an early admission of wrongdoing and paid full reparation. He had the support of his employer, had provided character references and demonstrated remorse to the Tribunal.

[47] Counsel for the PCC also referred the Tribunal to an English decision of the Medical Disciplinary Tribunal in support of a general submission that dishonesty is essentially a character flaw and therefore very difficult to remediate. The Tribunal was not assisted by this case. It involved a very different factual situation in another jurisdiction. The doctor, who did not attend the hearing, was found guilty of practising without authority, deceptive behaviour within a clinical setting and failing to provide good clinical care.¹⁸

[48] Counsel for the PCC submitted that *Harrison* was the most comparable case on penalty given the breach of trust of a vulnerable patient as had occurred in the present case. Counsel for the Practitioner argued that *Harrison* was not comparable because it involved more serious conduct and the practitioner in that case had accepted that cancellation was appropriate. Ms Johns was not able to point to a comparable case on penalty, but noted that all of the cases cited resulting in cancellation either involved larger sums of money or practitioners who had not engaged in the disciplinary process.

¹⁵ Above at [104] and [105].

¹⁶ *Kong* 422/Med11/181P.

¹⁷ *Chiew* 180/Phar08/95P.

¹⁸ *Aly Medical Practitioners Tribunal*, 14 October 2016.

Tribunal findings on penalty

[49] This was a serious case of dishonesty. The offending occurred on two occasions in the workplace where Ms Lal was employed as an enrolled nurse. Ms Lal's decision to offend against a patient is also a significant aggravating factor.

[50] In assessing the appropriate penalty, the relevant mitigating factors are:

- (a) Ms Lal admitted her wrongdoing in the District Court and before this Tribunal. She has been willing to own up to her conduct and does not seek name suppression. She voluntarily disclosed her offending to her current and previous employer, both in the health sector.
- (b) Ms Lal has already been punished for her offending. She has made full reparation to her victims and completed the community work sentence.
- (c) Ms Lal has apologised to her victims and acknowledged the impact on them. Ms Lal also expressed her remorse at the hearing, which the Tribunal accepts was genuine.
- (d) The amount taken was relatively small (by comparison to other cases before the Tribunal) and was used to pay utility bills when the practitioner was in financial difficulty. It is accepted that these were isolated and desperate acts stemming from Ms Lal's personal circumstances at the time. The offending was not calculated, sophisticated or systematic.
- (e) Ms Lal has engaged in the disciplinary process and taken steps towards rehabilitation.
- (f) Finally, positive changes in Ms Lal's personal life mean that the risk of reoffending appears to be low. She is supported by family, friends and her current employer in her desire to return to nursing.

[51] The Tribunal considers the cancellation is unnecessary in the circumstances of this practitioner. We do not see that this is necessary to protect the public or uphold professional standards in this case. The practitioner has demonstrated that she is capable of rehabilitation.

[52] The Tribunal censures the Practitioner to mark its disapproval of her unprofessional and dishonest conduct, particularly the conduct towards a patient, but also her conduct towards a colleague.

[53] However, we do consider it appropriate and proportionate to suspend the Practitioner's registration as an enrolled nurse for a period nine months. A period of suspension is necessary to mark the seriousness of the offending and to make clear to the profession that such conduct will have professional consequences. The suspension provides a further period for Ms Lal to reflect on her conduct while also recognising that an opportunity for rehabilitation is warranted in this case. This is the least restrictive penalty which satisfies the objectives of the HPCA Act.

[54] In deciding not to cancel the Practitioner's registration, the Tribunal is recognising the efforts Ms Lal has made towards rehabilitation in the four years since the conduct occurred and the trust she has been able to achieve with new employers.

[55] If the Practitioner returns to practice, she will be required to complete a Nursing Council approved course in ethics within six months and notify prospective employers about this Tribunal decision for a period of 12 months.

[56] The Tribunal believes that Ms Lal has learned her lesson and will not commit any act like this again against a patient or a colleague. She must recognise that this is a "once-only" second chance.

Costs

[57] Under section 101(f) of the HPCA Act, the Tribunal may order the Practitioner to pay part or all of the costs and expenses of the PCC and the Tribunal. There is no GST awarded on costs in the Tribunal, as is the case in costs before the courts.

[58] In this jurisdiction, it has long been established that in considering the appropriate quantum of costs, the Tribunal must consider the need for the Practitioner to make a proper contribution towards the costs. In doing so, the Tribunal takes 50% of the total reasonable costs as a starting point, in accordance with the dicta in *Cooray v Preliminary Proceedings Committee*.¹⁹ This percentage may increase or decrease depending on the individual case.

[59] The PCC's costs in relation to its investigation and prosecution are approximately \$10,000. The Tribunal's estimated costs are \$24,022.99.

[60] An award of costs is not intended to be punitive and the Practitioner's means, if known, should be considered.²⁰ Ms Lal gave evidence of her limited financial means at the hearing. It is appropriate to reduce the Practitioner's contribution in light of that evidence and also in recognition of her admission to the Charge and cooperation with the PCC and Tribunal.

¹⁹ HC Wellington, AP 23/94, Doogue J, 14 September 1995.

[61] The Practitioner is to pay \$5,134 being a 15% contribution to costs, half each to be paid to the PCC and Tribunal.

Non-publication Orders

[62] Every hearing of this Tribunal must be held in public unless the Tribunal orders otherwise. Section 95 of the HPCA Act deals with the Tribunal's powers in this regard as follows:

“95 Hearings to be public unless Tribunal orders otherwise

- (1) Every hearing of the Tribunal must be held in public unless the Tribunal orders otherwise under this section or unless section 97 applies.
- (2) If, after having regard to the interests of any person (including without limitation, the privacy of the complainant) and to the public interest, the Tribunal is satisfied that it is desirable to do so, it may (on application by any of the parties or on its own initiative) make any 1 or more of the following orders: ...[including private hearing orders or suppression of publication orders].

[63] The Tribunal must consider the important presumption of openness in judicial proceedings as set out in section 95. The discretion given to the Tribunal under section 95 to order non-publication must only be used in accordance with the guidance given under that section and in the case law.

[64] When the Tribunal is considering an application to suppress the name of any person appearing before it, or whether parts of a hearing will be in private, it must consider whether it *“is satisfied that it is desirable”* to make such an order taking into account the following:

- (a) The interests of any person; and
- (b) The public interest.

[65] Ms Lal's interim name suppression has lapsed and she has not sought permanent name suppression.

[66] Prior to the hearing, the Tribunal had ordered the interim suppression of the names of the two victims of Ms Lal's offending, Ms N and Ms Y. The PCC sought

²⁰ *Vatsyayann v PCC* [2012] NZHC 1138 at [34].

permanent suppression of those details under section 95 of the HPCA Act and the Tribunal makes that order on the basis it is desirable to do so in the public interest.

[67] During the hearing, Ms Lal gave detailed evidence about the difficulties she had experienced in her marriage. As her husband had no opportunity to respond to what was said, it is also desirable in the public interest that a non-publication order is made in relation to that part of Ms Lal's evidence presented at the hearing.

Orders of the Tribunal

[68] The Tribunal finds the Charge as laid under section 100(1)(c) of the HPCA Act is established.

[69] The Tribunal makes the following penalty orders under section 101 and section 102 of the HPCA Act, in respect of the Practitioner, Ms Ashwani Lal:

- (a) The Practitioner is censured to mark the disapproval of the Tribunal;
- (b) The Practitioner's registration is suspended for a period of nine months commencing on the date of this decision, subject to any rights of appeal that may be exercised.
- (c) In the event the Practitioner returns to practice as an enrolled nurse following her suspension, she must satisfy the following conditions:
 - (i) The Practitioner must undertake and successfully complete a Nursing Council of New Zealand approved course of study relating to ethics in nursing, to be paid for by the Practitioner, within six months of her return to practice; and
 - (ii) The Practitioner must disclose this Tribunal decision to any employer before commencing work as an enrolled nurse for a period of 12 months following her return to practice.

[70] The Practitioner is to pay costs of \$5,134, half each to be paid to the PCC and Tribunal.

[71] The Tribunal makes an order under section 95 of the HPCA Act for:

- (a) permanent suppression of the names and identifying features of the two victims of the Practitioner's offending, Ms N and Ms Y; and

- (b) permanent suppression of Ms Lal's evidence regarding the difficulties in her marriage.

[72] Under section 157 of the HPCA Act, the Tribunal directs the Executive Officer:

- (a) To publish this decision and a summary on the Tribunal's website; and
- (b) To request the Nursing Council of New Zealand to publish either a summary of, or a reference to, the Tribunal's decision in its 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 9th day of December 2020



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M Dew QC
Deputy Chair
Health Practitioners Disciplinary Tribunal

Appendix – Particulars of Charge

Charge under section 100(1)(c) of the HPCA Act 2003

1. The Professional Conduct Committee pursuant to s81(2) of the HPCA Act charges that, on 8 August 2017 Ashwani Lal was convicted in the Pukekohe District Court of two charges of using a document pursuant to section 228 of the Crimes Act 1961, and that those convictions either separately or cumulatively reflect adversely on her fitness to practise in that:
 - 1.1 While employed at Pukekohe Hospital, Ms Lal committed an offence of using a document without claim of right and with the intent to obtain a pecuniary advantage namely a Westpac Debit Visa card [*card number redacted*] valued at \$291.93 belonging to [] [Ms N].
 - 1.2 While employed at Pukekohe Hospital, Ms Lal committed an offence of using a document without claim of right and with intent to obtain a pecuniary advantage namely an ANZ Credit card [*card number redacted*] valued at \$1,266.14 belonging to [] [Ms Y].