



**NEW ZEALAND HEALTH
PRACTITIONERS
DISCIPLINARY TRIBUNAL**

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BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL

HPDT NO 1297/Med21/537P

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

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 Medical Council of New Zealand**

Applicant

AND **TEIMUR YOUSSEFI**, registered medical practitioner, of Wellington

Practitioner

HEARING held in Wellington 4 to 6 July 2022

TRIBUNAL Ms T Baker (Chair)
Mr T Burns, Dr L Wilson, Dr A Humphrey, Dr G Sharpe,
(Members)

Ms D Gainey (Executive Officer)
Ms H Hoffman (Stenographer)

APPEARANCES Mr S Waalkens and Ms S Ward for the Professional Conduct Committee

Mr J Dean for the Practitioner

DECISION OF THE TRIBUNAL

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Introduction

[1] A panel of the Tribunal convened on 4 to 6 July 2022 to hear a charge of professional misconduct laid by a Professional Conduct Committee (**PCC**) appointed by the Medical Council of New Zealand (**Medical Council**) against the practitioner, Teimur Youssefi.

The Charge

[2] The amended charge contains four paragraphs. A full copy of the charge is annexed to this decision as **Appendix A**. The first two particulars allege that on 14 February 2018 Dr Youssefi was convicted in the District Court at Wellington under section 257(1)(b) of the Crimes Act 1961 on one charge of knowingly using a forged document. This related to his application to the Medical Council for provisional registration in New Zealand in May 2015 when he falsified a certificate of good standing. Using a forged document is an offence punishable by a term of imprisonment not exceeding 10 years. The PCC alleges that the conviction reflects adversely on his fitness to practice and is therefore a ground for discipline under section 100(1)(c) of the Health Practitioners Competence Assurance Act 2003 (**the Act**).

[3] The second part of the charge alleges that between 2 June 2015 and 7 July 2021 Dr Youssefi's responses to feedback about his competence were inappropriate and disrespectful. This conduct was further particularised, but not limited to, 6 examples:

- (a) Behaving aggressively and/or unpleasantly during a meeting with Dr Albrett and Dr Kumar in February 2020 to discuss concerns about Dr Youssefi's competence; and/or
- (b) Stating to Dr Albrett in a meeting in February 2020 that other House Officers were bullying him and/or that the people who had raised concerns about his response to a medical emergency should be subject to an investigation; and/or
- (c) Stating incorrectly to Dr Albrett during a discussion about concerns with his performance that a nurse had been so impressed with his performance that she had praised his performance to the Head of Psychiatry;

- (d) Questioning the fitness of Dr Albrett to act as a Prevocational Educational Supervisor; and/or
- (e) Stating that Dr [L] was crazy, that he was inherently biased and dishonest, and that Dr [L]'s comments about his performance were invalid because he had suffered []; and/or
- (f) Stating to the PCC in July 2020 that Dr Albrett's concerns were "flagrant lies" and that his concerns regarding his experience were "initial paranoid suspicion".

[4] It was alleged that these acts or omissions amount to professional misconduct under sections 100(1)(a) and/or (b) of the Act, either on their own or when considered with the conduct that was the subject of the conviction.

[5] Dr Youssefi denied the charge, but during the course of the hearing, he accepted the conviction and that it reflected adversely on his fitness to practise.

Evidence

[6] Some facts were agreed, and the parties filed an Agreed Summary of Facts (**ASF**). The PCC called four witnesses and also relied on some documents contained in the Agreed Bundle of documents.

[7] The PCC called four witnesses:

- (a) Jonathan Albrett
- (b) Leonie Fowler
- (c) Thomas Paul Hogg
- (d) Rajesh Kumar.

[8] The practitioner gave evidence and submitted evidence from three witnesses who were not required for cross-examination:

- (a) John van Dalen
- (b) Glenda Huston
- (c) Edwin Whiteside.

Background

[9] Some background was contained in the ASF. It was not disputed that in 2008 Dr Youssefi graduated with a Lekarz (medical degree) from Poznan University in Poland. He obtained provisional registration in New Zealand in June 2015. His registration was subsequently cancelled because of a false declaration submitted to the Medical Council. He successfully reapplied for re-registration in December 2018 and at the time of this Tribunal hearing he held Provisional General Registration but did not hold a current practising certificate. Dr Youssefi lived in Australia from 15 August 2021 and returned to New Zealand to find work on 3 April 2022.

Conviction – particulars 1 and 2

[10] In July 2011, Dr Youssefi was provisionally registered with the Malta Medical Council. In 2014 he faced two disciplinary charges before the Malta Medical Council, arising out of a single incident involving a pelvic examination. In a decision dated 27 August 2014, the Malta Medical Council found Dr Youssefi not guilty of “immorality, indecency, or dishonesty or any other act involving the abuse of a professional relationship” but found him guilty of failing to meet the ethical standard requiring that “a doctor shall by his conduct and in all matters set a high standard”. Dr Youssefi was reprimanded and ordered to undergo a year of training or practise under supervision.

[11] In May 2015, when Dr Youssefi applied for provisional registration in New Zealand, he:

- (a) Falsified a certificate of good standing from the Malta Medical Council by removing a page and editing the first page to remove reference to having been found guilty of an ethics breach and instead said that there were no disciplinary proceedings.
- (b) Incorrectly answered a question regarding previous disciplinary proceedings when applying for registration with the Council to imply he had not previously been the subject of disciplinary proceedings.

[12] The actual European Certificate of Current Professional Status (Good Standing) from Malta is a two-page document, a copy of which was in the Agreed Bundle of Documents. Page 1 sets out information such as Dr Youssefi’s full name, Professional ID number, gender, date of birth, nationality, qualifications and registration status. These details, along with the letterhead take up about three-quarters of the page.

[13] Immediately below the Registration Status is a paragraph that reads:

The Medical Council Malta further notifies an Inquiry by virtue of Article 31 of the Health Care Professions Act 2003 Cap.464 of the Laws of Malta of having acted in an unethical and unprofessional way towards a patient in breach of Article 4(a) of Ethics of the Medical Profession Regulations (Legal Notice 303 of 2008) which provides that “the following offences shall be deemed to be offences which may entail erasure from the registers or any other disciplinary action (a) acts of immorality, indecency or dishonesty or any other act involving the abuse of a professional relationship” and Article 5 of the “Ethics for Medical Practitioners which provides that ‘A doctor shall by his conduct and in all matters set a high standard’, was held against Dr Youssefi Teimur:

[14] The second page begins: “The Medical Council of Malta notifies that after considering all the acts of the case decides as follows”. It then records that Dr Youssefi was found not guilty on the charge as provided in Article 4(a) and that Dr Youssefi was found guilty on the second charge, namely Article 5 of the “Ethics for Medical Practitioners which provides that “A doctor shall by his conduct and in all matters set a high standard”. The document records that Dr Youssefi was reprimanded and ordered to undergo a year of training or practice under supervision in addition to the Foundation School Programme. The second page is signed by the registrar and stamped with a seal.

[15] The document Dr Youssefi submitted to the Medical Council of New Zealand is one page. Instead of the paragraph that begins “The Medical Council Malta further notifies an Inquiry by virtue of Article 31 of the Health Care Professions Act 2003...”, there is a different paragraph which reads:

I FURTHER CERTIFY that no disciplinary proceedings under Part VII (Disciplinary Action, Offences and Erasure of Names) of the Health Care Professions Act 2003 (Cap.464 of the Laws of Malta), are in progress against the practitioner named above.

[16] This is followed by the Registrar’s signature and seal.

[17] In New Zealand, Dr Youssefi was initially employed as a house officer at Whanganui Hospital between May 2015 and August 2015, for a surgical and orthopaedic run. He signed an amendment to his original contract to continue working as a house officer until 29 November 2015 which was for a general medicine run. Dr Youssefi did not complete the general medicine rotation. His last day of duty was 17 September 2015, as he was stood down and took two weeks and four days’ leave until his departure on 6 October 2015.

[18] Dr Youssefi's practising certificate was revoked by the Medical Council on 23 September 2015 as his practising certificate was subject to his employment as a PGY-1 under the supervision of a prevocational educational supervisor (PES).

[19] On 24 August 2016 Dr Youssefi's registration was cancelled by the Medical Council under section 146 of the Health Practitioners Competence Assurance Act 2003. He was suspended due to his falsification of the certificate of good standing filed in his 2015 provisional registration application and his incorrect answer to whether he had been subject to any disciplinary proceedings previously.

[20] Dr Youssefi pleaded guilty in the Wellington District Court on one charge of knowingly using a forged document under section 257(1)(b) of the Crimes Act 1961. A copy of the "certified copy or extract of the permanent Court record" was produced, showing that on 14 February 2018 Dr Youssefi was convicted and discharged on one charge of using forged documents. Dr Youssefi was also convicted of dishonestly taking or using a document under section 228 of the Crimes Act.

[21] Judge Hobbs declined to discharge Dr Youssefi without conviction but imposed no further penalty. Personal information was suppressed, but name suppression was declined.

[22] Dr Youssefi appealed the decision not to grant a discharge without conviction and not to grant name suppression. In a judgement dated 27 June 2018 Dr Youssefi was discharged without conviction on the section 228 charge of dishonestly taking or using a document on the basis that this offence overlapped with his conviction for knowingly using a forged document. Dr Youssefi's appeal against conviction for knowingly using a forged document was dismissed. The High Court confirmed he was convicted and discharged on this offence. His appeal on the question of name suppression was unsuccessful.

[23] Dr Youssefi unsuccessfully appealed the High Court decision to the Court of Appeal. Copies of the High Court and Court of Appeal decisions were included in the Agreed Bundle of Documents before the Tribunal.

[24] Dr Youssefi applied for re-registration on 14 August 2018. This application was initially denied, but after Dr Youssefi was heard in person at a meeting before the full Medical Council, he was reinstated to the Register on 5 December 2018.

[25] On 9 December 2019, Dr Youssefi started work at Taranaki District Health Board (TDHB), as it then was,¹ as a PGY-1² house officer. He began in a psychiatry run and it was anticipated that he would enter a surgical rotation in May 2020.

[26] On 3 February 2020, Dr Youssefi met with Dr Rajesh Kumar and Dr Jonathan Albrett. On 14 February 2020, Dr Youssefi was suspended, and was invited to attend an investigation meeting on 19 February 2020 to review his suspension and discuss allegations that Dr Youssefi had misrepresented his experience and qualifications on his application for employment and work history in his CV through the recruitment process into TDHB. That second proposed meeting did not take place.

[27] On or about 27 February 2020 the District Health Board withdrew its offer of employment for the fourth PGY-1 rotation in Urology that was to begin in May 2020 and offered Dr Youssefi a settlement under the Employment Relations Act.

[28] It was not disputed that at the time of Dr Youssefi's 2015 application for registration he was [details of health condition]. He had emigrated to New Zealand []. This information remains suppressed through court order.

[29] Throughout his career, Dr Youssefi has suffered [].

[30] Dr Youssefi was diagnosed on 28 September 2020 with [health conditions], for which he is undertaking ongoing [treatment].

Jonathan Albrett

[31] Jonathan Albrett is a medical practitioner, first registered with the Medical Council in 2002. He has been a Fellow of the Australian and New Zealand College of Anaesthetists since 2010, obtained vocational registration with the Medical Council in anaesthesia in 2011 and intensive care medicine in 2013. Dr Albrett is employed by Te Whatu Ora in Taranaki³ as an Anaesthetist and Intensive care physician and has been a prevocational educational supervisor (**PES**) since 16 November 2016. For about three years he has been the Director of Clinical Training at Taranaki Base Hospital.

¹ The 20 District Health Boards were disestablished and replaced by Te Whatu Ora under the Pae Ora (Healthy Futures) Act 2022

² Post-graduate Year 1

³ Until 1 July 2022 the employing entity was the Taranaki District Health Board

[32] Dr Albrett told the Tribunal that Dr Youssefi started working at Taranaki District Health Board (**TDHB**) on 9 December 2019 and was assigned to a psychiatry run, where Dr Rajesh Kumar was his PES.

[33] In January 2020, two PGY-1 doctors went to Dr Albrett with some concerns about Dr Youssefi. They described two occasions where they had witnessed Dr Youssefi's performance during medical emergencies and thought it was of significant concern. They wanted to highlight this so that more support could be put in place for him.

[34] Dr Kumar and Dr Albrett decided to meet with Dr Youssefi and discuss the concerns about his performance. The meeting was arranged for 3 February 2020. Dr Albrett said that the purpose of the meeting was to see how they might be able to support Dr Youssefi.

[35] Before the meeting Dr Albrett and Dr Youssefi looked at Dr Youssefi's "ePort"⁴ record, which raised a number of concerns. According to that record Dr Youssefi had an orthopaedic run approved at Whanganui District Health Board, but his PES at the time, Dr [L], had recorded an extensive list of concerns. He criticised Dr Youssefi for submitting the run to the Medical Council as "approved" when Dr [L], as his PES, had not actually signed it off.

[36] Dr Kumar and Dr Albrett also noted that in Dr Youssefi's CV he had said that he had completed a run as a Medical House Officer between August and October 2015 at Whanganui, when ePort did not have a record of him having completed this run at that time.

[37] Dr Albrett said that at the meeting they explained to Dr Youssefi the concerns that had been raised about Dr Youssefi's wellbeing and the two accounts from the other two PGY-1 doctors and explained that they wanted to hear what he had to say, they were there to support him and it was not a disciplinary meeting.

[38] Dr Albrett said that during the meeting Dr Youssefi became very upset and came across as unpleasant and aggressive.

[39] One of the incidents reported to Dr Albrett related to a concern that Dr Youssefi had stopped or delayed a call to resuscitate a patient. Dr Youssefi told them that he could

⁴ The ePort record is a national e-portfolio programme which records and tracks skills and knowledge acquired by new doctors during their first two years of medical practice.

not really remember but that he was sure he would not have stopped the resuscitation call from going out. He then said that the nurses involved had emailed Dr Shetty praising his resuscitation and Dr Shetty had congratulated him and said he had heard he had done very well.

[40] Dr Kumar and Dr Albrett thought it strange that Dr Shetty (a psychiatrist) would comment on an anaphylaxis resuscitation, and so Dr Albrett contacted Dr Shetty who had no idea what he was talking about and said he had not written any emails of commendation to Dr Youssefi and did not have any conversation with him.

[41] In relation to the second incident, Dr Youssefi said that the doctor who had raised the concerns was in fact bullying Dr Youssefi, and he wished to complain about that doctor. Dr Albrett could not recall the exact words used, but he remembered Dr Youssefi being derogatory regarding the other doctor's professionalism. Dr Albrett explained that this doctor had gone to him worried and had wanted support for Dr Youssefi. It had not come across as bullying.

[42] Dr Kumar and Dr Albrett asked Dr Youssefi about the inconsistency between his ePort and the information submitted in his application to work at Taranaki District Health Board. Dr Youssefi admitted that he had been an observer during the medical run at Whanganui, not a doctor, which was different from what he had written on his CV.

[43] Dr Kumar and Dr Albrett asked about Dr [L]'s comments in Dr Youssefi's ePort. Dr Youssefi said, "That man was crazy. I was outstanding. He was a bully. He was nuts. [].

[44] []. Dr Albrett felt that Dr Youssefi's comments about Dr [L] in these circumstances were disrespectful.

[45] Dr Youssefi told them that the main reason he resigned from Whanganui District Health Board was the stress related to bullying from his supervisor, whom they assumed to mean Dr [L]. Dr Albrett said that throughout the meeting Dr Youssefi appeared angry and in denial. He came across as aggressive and made several counter allegations. They became concerned about Dr Youssefi's [health].

[46] Dr Albrett suggested that Dr Youssefi engage with the Employee Assistance Programme and suggested he get a New Plymouth GP. Dr Youssefi had described some

very stressful situations in his life, including an abusive relationship, and they wanted to support him.

[47] Following this meeting Dr Kumar and Dr Albrett decided it was best to pass the information on to the Human Resources Department and to Dr Greg Simmons, the Chief Medical Officer. This included forwarding a chain of emails between Dr Albrett and Dr Kumar.

[48] The only other time that Dr Albrett met with Dr Youssefi was at a meeting on 14 February 2020 where Dr Simmons informed him that he was being suspended.

[49] In accordance with reporting requirements, on 19 February 2020 Dr Albrett contacted the Medical Council and spoke to a professional standards coordinator. This was followed up with an email.

[50] In cross-examination Dr Albrett said that he did not email Dr Youssefi in advance of the meeting about the allegations from the other doctors because he considered it was a welfare issue. He was not expecting that they would uncover anything unusual.

[51] Dr Albrett explained that after he had referred the matter to HR, he was told that a Google search of Dr Youssefi revealed media coverage of his court case.

[52] Under cross-examination, Dr Albrett remained firm in his stance that the purpose of the meeting on 3 February 2020 was to ensure Dr Youssefi's welfare. Dr Albrett did not undertake a Google search of Dr Youssefi before that meeting. Dr Albrett contacted HR because Dr Kumar had uncovered some evidence that suggested that Dr Youssefi may have misrepresented himself (in his application to the DHB).

[53] Dr Albrett's explanation for not documenting the concerns raised by the two PGY-1 doctors was that they had said that they just wanted someone to check that he was okay, so Dr Albrett contacted Dr Kumar about it. Dr Albrett did not think that patients' lives were in danger; he just thought there may be a welfare concern.

[54] On Dr Youssefi's behaviour at the 3 February meeting, Mr Dean asked if by "angry", Dr Albrett meant that Mr Youssefi was frowning. Dr Albrett's evidence was:

How do you describe anger to someone? Something along the lines of,

"Look, people have concerns".

"Concerns, what concerns?"

"You know, that you may have been" –

"That guy, that guy, he acts like he's older than me. To me the guy looks 14 years old". I mean –

...

... he said Dr Goodwin was acting like he was older. That was his immediate defensive retorts. It was unusual. It appeared aggressive and angry.

[55] When asked to quantify the degree of aggression and unpleasantness, Dr Albrett said that Dr Youssefi's responses were the "most highly abnormal unusual responses" he had seen in his life, in answer to a welfare question. As an explanation he said that Dr Youssefi's answers were, "The nurses said it was the best resus they had ever seen" and "The nurses should be investigated for poor performance".

[56] Dr Albrett did not accept that Dr Youssefi said simply that he had asked a nurse to write a letter to the Head of Department. He said that Dr Youssefi had told him that a letter was sent and the Head of Department had said, "Well done".

[57] Dr Albrett's explanation for not meeting up with Dr Youssefi to clarify the matters that they had gone through with him was because they were not training issues. He felt this had become a scenario that was outside his remit.

[58] In answer to questions from the Tribunal, Dr Albrett acknowledged that there was not enough time separation to step back and think that the apparent inconsistencies on the ePort could become a disciplinary matter. The meeting was for the purposes of a welfare check, and Dr Albrett said he accepted that when inconsistencies in Dr Youssefi's CV came up in the pre-brief before the meeting, Dr Albrett could have postponed the meeting, but he just did not think of that at the time.

[59] Dr Albrett said that in similar meetings with other doctors when concerns have been raised with the doctor, the range of reactions have included surprise, relief, or an explanation of a misunderstanding, but this meeting rapidly escalated into counter-allegations in a way Dr Albrett had not experienced before.

Leonie Fowler

[60] Leonie Fowler is a registered nurse, having been registered since 1984. She works at Taranaki Base Hospital. Between December 2019 and February 2020 Nurse Fowler worked with Dr Youssefi. She was the afternoon coordinator during that time. She would start her shift at 2:45 pm, and Dr Youssefi would usually end his shift at about 4:30 pm.

[61] Around early 2020, Dr Youssefi and Nurse Fowler were involved in providing care for a patient who suffered from anaphylaxis. Nurse Fowler walked into the patient's room and found her having a medical event. Nurse Fowler motioned to Dr Youssefi who was standing relatively close to the room (it was towards the end of his shift). The medical team arrived a short time later.

[62] Dr Youssefi later asked Nurse Fowler, "out of the blue", whether she could give him any feedback about his care of the patient. She did not give him any feedback at the time. He asked her if she thought they did well and she told him, "We did well". There was nothing more to it. She said it was just like, "That was good".

[63] Nurse Fowler's evidence was that she found it a little weird that he had asked her for feedback but did not think anything more of it as the ward was very busy.

[64] On 7 March 2020, Nurse Fowler received an email from Dr Youssefi in which he asked whether she recalled an anaphylaxis case which they had dealt with and said that she had told him she was impressed with his management of the patient and had suggested that she would write a letter to the Head of Dr Youssefi's department. A copy of the email was produced.

[65] Nurse Fowler said that it was not correct. She did not write a letter to the Head of Department, nor did she offer to. As far as she can recall, she did not tell Dr Youssefi how impressed she was with his management of the patient. Nurse Fowler did not respond to the email.

[66] In cross-examination Nurse Fowler said she did not recall Dr Youssefi phoning her and asking if she had forgotten about the email that they had talked about her sending to the Head of Department. She conceded it is possible he did ask her.

[67] Nurse Fowler said that she had not had other doctors ask for feedback. She had worked in the Crisis Team for 15 years and had not worked on the ward for long.

Thomas Paul Hogg

[68] Dr Thomas Paul Hogg was the convenor of the PCC which investigated concerns about Dr Youssefi and determined to lay a charge against Dr Youssefi.

[69] Dr Hogg said that in May 2015 when applying for provisional registration in New Zealand, Dr Youssefi:

- (a) Falsified a certificate of good standing from the Malta Medical Council by removing a page and editing the first page to remove reference to Dr Youssefi having been found guilty of an ethics breach and instead read that there were no disciplinary proceedings.
- (b) Incorrectly answered a question regarding previous disciplinary proceedings to imply he had not previously been the subject of disciplinary proceedings.

[70] During the criminal proceedings Dr Youssefi submitted that he had failed to submit the second page of the certificate of good standing. This was not accepted by the Court. Dr Youssefi admitted to the PCC that he had edited the date on an earlier certificate of good standing from the Malta Medical Council and submitted this edited version. Dr Hogg produced the certificate of good standing as submitted to the Medical Council as well as a copy of the actual certificate of good standing provided by the Malta Medical Council.

[71] Dr Hogg produced copies of documents obtained during the course of the PCC investigation, including the Police summary of facts, the sentencing notes from the District Court, the High Court appeal decision, the notice of result from the Court of Appeal and the Court of Appeal's conviction appeal decision. The PCC also obtained affidavits filed by Dr Youssefi in the course of the criminal proceedings, being affidavits sworn on 15 November 2017, 8 May 2018, 8 February 2019 and 7 February 2020 respectively.

[72] Dr Hogg also produced two responses from Dr Youssefi to the Medical Council and/or the PCC, being a letter dated 29 May 2020 and a letter dated 14 July 2020. Dr Youssefi's written submissions through his counsel were also produced as was a transcript of his meeting with the PCC on 7 July 2021. Dr Youssefi also provided further submissions on 24 August 2021. These were all included in the Agreed Bundle of Documents before the Tribunal.

[73] Attached to a 30 June 2021 submission to the PCC made by Mr Deans is a table of Dr Youssefi's responses to Investigation Documents. In response to statements found in Dr Albrett's transcript of interview with the PCC, Dr Youssefi's comments include:

Dr Johnathan Albrett, (Initial paranoid suspicion that triggered this investigation)

It is ironic that Dr Albrett seems to speak in such a biased and one-sided opinion on everything.

...

I never told Dr Albrett that I was outstanding and [Dr [L]] was crazy. I said to him the (sic) Dr [L] was unwell and he bullied me.

What I find unusual is that Dr Albrett is relying on a [] in order to form and (sic) opinion on Dr [L], and similarly on me.

I find this rather immature and naïve and I really now question how fit Dr Albrett is as a Prevocational Educational Supervisor.

...

I say those earlier allegations that I am not competent are an exaggeration by Dr Albrett.

He turned a few stressful oncall where no one was harmed but in fact was well-managed.

He confabulated and exaggerated the story to make it out that I had serious clinical issues.

I believe there was no evidence to (sic) he deliberately exaggerated it so he could get HR to get rid of me.

I believe Dr Albrett is biased and believes as a NZ trained doctor that he is somehow a cut above the rest.

...

Is Dr Albrett[’s] idea of providing extra support for Dr Youssefi is by removing him from his position as a House Surgeon in his final rotation in Urology before he becomes a PGY2? I don’t believe a word of Dr Albrett[’s] concern he was rather annoyed that he had me as a house surgeon working at his hospital with such a colourful history with the law and regulatory bodies.

I doubt these flagrant lies by Dr Albrett

[74] During the PCC interview on 8 July 2021, Dr Youssefi was asked about these comments. There were a few words missing from the transcript of the PCC interview because they were inaudible. In cross-examination and with no objection from the PCC, those words were provided by Mr Deans. The supplemented transcript reads:

PH: There’s a lot of language in terms of describing Dr Albrett and I just want you to sort of comment about it and see how you in retrospect feel about it.

TY: Yeah, you see I don’t, I don’t believe I wanted to – see that’s a draft summary and I didn’t intend to provide it to the PCC

...

PH: – and I’m just looking at it, you know, you talked about Dr Albrett as being paranoid, immature, naïve, confabulated, exaggerated, all these terms about a

colleague that you can – can you just, you know, what’s you sort of feeling about presenting that sort of information to this sort of forum?

TY: I had no intention to present it, these are my –

...

TY: – these are just what my feelings were at the time because he was paranoid about it, to be honest, he was paranoid about me misrepresenting myself to be honest, like – and now’s he’s claimed that I – he claimed that I was an orthopaedic observer, not a house surgeon...

Rajesh Kumar

[75] Dr Rajesh Kumar graduated with a Bachelor of Medicine and Bachelor of Surgery from the University of Bombay in India in 1978. He became a Fellow of the Royal Australasian College of Physicians in 1996, having first registered with the Medical Council of New Zealand in 1990. He is the Director of Physician Education based at Taranaki Base Hospital.

[76] Dr Kumar was Dr Youssefi’s PES during the time that Dr Youssefi worked at Taranaki Base Hospital, from 9 December 2019 to 23 February 2020. Dr Kumar has significant experience supervising doctors who have been through the NZREX, which is the examination of overseas trained doctors wishing to practise in New Zealand.

[77] Dr Kumar said that his usual practice is to meet with PGY-1 interns early on in their time at the DHB to discuss their professional development, professionalism and personal wellbeing. He met with Dr Youssefi on 14 January 2020.

[78] Dr Kumar said that he would usually go through an intern’s ePort in his first meeting with them but was unable to do so on 14 January with Dr Youssefi as Dr Kumar did not have access to his ePort. In this meeting Dr Youssefi told Dr Kumar, amongst other things, that this was his third PGY-1 run. Dr Kumar recorded that in his notes which he produced.

[79] In early February 2020 Dr Kumar met with Dr Albrett to discuss some concerns that two PGY-1 doctors had raised about Dr Youssefi in relation to his clinical competence and his general welfare. Dr Kumar then looked at Dr Youssefi’s ePort to see if there had been any previous concerns raised about him. There were a number of things that concerned Dr Kumar from the ePort. Dr Kumar noted that Dr Youssefi’s curriculum vitae and his application for employment stated that he had completed a run as a medical house officer between August and October 2015 at the Whanganui District Health Board, but there was no record of that on the ePort. Dr Kumar also found some comments from Dr Youssefi’s

previous prevocational educational supervisor, Dr [L], which expressed significant concern about Dr Youssefi.

[80] When Dr Albrett and Dr Kumar met with Dr Youssefi on 3 February 2020, Dr Kumar told Dr Youssefi that some of the house officers had raised concerns about Dr Youssefi's performance and welfare. Dr Albrett and Dr Kumar tried to make it clear that this was not a disciplinary meeting and that they just wanted to hear his side of the story.

[81] Dr Kumar's evidence was that Dr Youssefi did not respond well. He came across as angry and extremely defensive and in response said that one of the house officers was bullying him and out to get him.

[82] Dr Kumar asked Dr Youssefi why his CV said that he had completed a run as a medical house officer between August and October 2015 but his ePort did not have any record of it. He recalled Dr Youssefi told them something along the lines that he did not actually complete that run and that he had pulled out after a time as there were some concerns about his performance.

[83] Dr Youssefi went on to say to them that he had pulled out due to extreme stress, that this was in relation to his PES bullying him and that his PES had been paranoid []. Dr Kumar found Dr Youssefi's statements about Dr [L] came across as inappropriate and disrespectful. He elaborated that Dr Youssefi had referred to Dr [L] as being crazy, paranoid, [].

[84] In oral evidence Dr Kumar clarified that it was not entirely surprising that Dr Youssefi was defensive, and in doing so, he put counter-allegations and when talking about the other two House Officers he showed anger. When he talked about Dr [L] he was clearly angry. This was in his body language and tone rather than the selection of angry words. Dr Kumar said that in other situations when he has raised concerns, he has encountered people being defensive and making counter-allegations, but he had not often come across people who bring anger into that as well. The anger was not directed at Dr Albrett or Dr Kumar.

[85] Dr Kumar was asked whether Dr Youssefi's response was reasonable and proportionate, given that allegations around misleading the DHB were not later pursued. Dr Kumar thought that Dr Youssefi's response was excessive, that he went to the point of counter-allegation which were not true. When asked if anything better could have been

done in the clinical setting, Dr Youssefi did not reflect on himself but went straight to saying that he wasn't on call, it wasn't his business, and talking about the house officers.

[86] Dr Kumar considered the discrepancies between Dr Youssefi's CV and the ePort was an HR matter. Dr Kumar's concern was Dr Youssefi's clinical practice.

[87] Dr Kumar produced a copy of an email chain dated 4 February 2020 which he had sent to Dr Shetty, the Clinical Director of Mental Health and Addiction Services, asking if he recalled receiving an email from one of the ward nurses commending how well Dr Youssefi had managed an anaphylaxis. Dr Shetty had replied that there was no email, but offered to check the notes of the patient if the name was provided. Dr Kumar said that this email had been sent because Dr Youssefi had mentioned at the 3 February meeting that the resuscitation had gone so well that the attending nurse had sent an email to the Head of Department saying that it was such a great resus. And I had asked him at the meeting as to whether I could contact Dr Shetty to get a copy of that email and he said, "Yeah, you can go ahead. I can get a copy but you can contact him directly". Dr Kumar elaborated that Dr Youssefi had said that the nurse was so impressed, and she said that she hadn't actually seen a resus conducted like this in a long time or ever, or something to that effect, and that she had gone to the extent of writing an email to the Head of Department saying how well Dr Youssefi had conducted that resus.

[88] Dr Kumar also produced a further email chain starting on 31 January 2020 when Dr Albrett had emailed him about the proposed meeting on 3 February 2022. Dr Kumar had then added some bullet points to the email, being his notes after the meeting, and forward it to Dr Albrett. This included a comment, "Feels he did a great job and claims the nurse emailed to the HOD about how well he had performed. Said that he could get us a copy of that email and that I could approach the HOD about it if I wished.

[89] In cross-examination Dr Kumar was asked whether Dr Youssefi had actually said that Dr [L] was "unwell" rather than "crazy". He replied:

I would have liked him to say that Dr [L] was unwell and be a little bit respectful but unfortunately, that's not how it came out no.

Teimur Youssefi

[90] Dr Youssefi read from an amended brief of evidence which was, although shorter than his initial brief of evidence, was still a lengthy, repetitive response. As well as providing a background to his arrival in New Zealand, he commented on a number of

documents that had been presented to him. In many respects, his written statement contained little evidence and included submission and instructions or response to his counsel on the PCC evidence. Only parts of it could be described as a narrative.

[91] Dr Youssefi was born in Kabul, [].

[92] Dr Youssefi described [].

[93] The family arrived in Australia when Dr Youssefi was about five and he was educated there. Because of his father's work commitments, the family relocated to Europe and Dr Youssefi studied medical sciences at Poznan University in Poland, graduating in June 2008.

[94] Unfortunately, because he did not have EU citizenship, Dr Youssefi was unable to take up work in Europe. He then took the Australian Medical Council examination and passed it in November 2008. He did several unpaid observer-ships at Australian hospitals before securing a trainee position in Malta, which he started in July 2011 and worked there until August 2013.

[95] Dr Youssefi then returned to Australia and did a three-month locum at Tamworth Base Hospital before taking his NZREX clinical exam in November 2013 which he passed on his first attempt. He was keen to leave Australia [].

[96] Dr Youssefi said that he then made a stupid decision to submit "not the full copy" of his Malta Medical Council certificate when he applied for positions in New Zealand.

[97] Dr Youssefi said that when he applied for the position at Whanganui District Health Board he panicked and made a foolish decision to "submit an old COGS" (certificate of good standing) from Malta which left out the second page detailing a decision of the Medical Council of Malta dated 27 August 2014. Dr Youssefi explained he was desperate to leave his home situation as things had become so unbearable arising from []. He explained he was not in a state of mind to rationally think things out. He said he was concerned that [].

[98] Dr Youssefi acknowledged that he failed to mention past matters and past investigations on the Medical Council application form, and he did not make a truthful declaration on it.

[99] Dr Youssefi started work at Whanganui Hospital in orthopaedics on 3 June 2015 and was signed off by two clinical supervisors in orthopaedics following his three-month rotation.

[100] Dr Youssefi started his medical rotation in late August 2015 and continued until Dr [L] “fabricated” a stand-down letter, citing unfounded and unproven competency concerns. Dr Youssefi disagreed with the performance improvement plan as he considered the examples stated in Dr [L’s] letter were false and he disagreed with them. He took two weeks and four days leave and resigned from Whanganui District Health Board on 6 October 2015.

[101] Dr Youssefi gave evidence of how unhappy he was that Dr [L] had uploaded his letter as a report into Dr Youssefi’s orthopaedics rotation on ePort, making it appear that competency concerns arose during that period. Dr Youssefi’s evidence was that Dr [L] had selectively targeted him and put him under scrutiny. He had singled Dr Youssefi out as a junior doctor. He said that Dr [L] was not supportive at all.

[102] On 2 October 2015 the Medical Council of New Zealand referred Dr Youssefi’s registration application to the Police.

[103] In mid-October 2015 Dr Youssefi was arrested while boarding a flight to see family in Australia. He had a return flight in two weeks and did not know charges had been laid. He knew that the Medical Council had issues with various things in his application.

[104] Dr Youssefi had three charges laid against him, his passport was taken from him and he was subject to bail conditions where he had to present to a police station every day. In late December 2015, [details of health condition]. He was at the time residing in respite accommodation temporarily while [details of health condition]. From then on, he was prescribed [medication] for [time period] and he also sought [treatment] from [x], a registered [health practitioner], for [time period].

[105] From 2016 to 2020 there were various court attendances and proceedings as he appealed matters through to the Court of Appeal.

[106] In May or June of 2016 Dr Youssefi gained employment with ACC as a Clinical Analyst as a temporary worker. When he applied to become a permanent employee and disclosed in his application that he had court proceedings in relation to his application for

medical registration, ACC decided that they would stand him down from his position because there was “a conflict of interest” with the Medical Council.

[107] On 20 August 2016 the Medical Council cancelled Dr Youssefi’s registration.

[108] In the latter part of 2016 Dr Youssefi was having trouble supporting himself and he did a paper in ethics and clinical practice which continued through to November 2018.

[109] [].

[110] Dr Youssefi described his attempts at obtaining employment in non-medical sectors throughout 2017. On 7 September 2017 he pleaded guilty to using a forged document under section 257 and obtaining by deception under section 228(b) of the Crimes Act 1961. A third charge of making a false declaration under s 111 was struck out. Dr Youssefi’s passport was returned.

[111] On 14 February 2018 Dr Youssefi’s sentencing took place. He was convicted and discharged.

[112] On 16 March 2018 Dr Youssefi contacted the Medical Council asking about requirements for re-registration. He was told he would need a current NZREX pass and a job offer as a PGY-1 house officer from an accredited training provider.

[113] Dr Youssefi described his attempts to obtain employment throughout 2018 and his reinstatement to the Register on 21 December 2018. He continued to apply for positions and in June 2019 he started a psychiatry observer-ship at Waikato Hospital. In 2019 Dr Youssefi started work as a Medical House Officer in the acute general medicine ward. Then on Monday 9 December 2019 he started medical duties as a Psychiatry Medical House Officer at Taranaki District Health Board.

[114] On 3 February 2020 Dr Youssefi met with Dr Kumar and Dr Albrett. He understood this was to be an ordinary meeting with his PES, Dr Kumar. This was the first and only time he had met Dr Albrett.

[115] In his evidence before the Tribunal Dr Youssefi set out a chronology of events in February 2020, including correspondence between staff at the District Health Board and his own court proceedings. Dr Youssefi also outlined his meetings with the Medical Council throughout their investigation.

[116] In mid-September 2020 Dr Youssefi was referred to a psychologist in Australia who diagnosed him as having [health conditions]. Dr Youssefi said his concern was how and why those PGY-1 doctors turned his [health condition] into something other than that. He said he has stated so many times a lot of people were talking behind his back, especially about his court cases and the fact that his name was all over the internet. Dr Youssefi said it is not fair that Dr Albrett has exaggerated claims of incompetence in his letters when there is no evidence to support any patient being mismanaged under Dr Youssefi's care. Even in the two acute cases, there was no evidence to suggest that anyone was harmed. Dr Youssefi also talked about his care of the patient who had anaphylaxis, noting that he wrote almost two pages in the patient's file.

[117] Dr Youssefi made comments about the interviews that Dr Kumar and Dr Albrett had with the PCC. He noted that Dr Albrett said to the PCC that the two PGY-1 doctors had expressed concerns about Dr Youssefi's wellbeing, not anything about his clinical performance. Dr Youssefi says that the actions taken by Dr Kumar and Dr Albrett had less to do with his wellbeing but more to do with the District Health Board prioritising its organisational reputation over his wellbeing.

[118] Dr Youssefi said it is ironic that the PCC convenor, Dr Hogg, said he will not be exploring Dr Youssefi's competence or experience at Whanganui DHB on the 7 July 2021 interview with him, but the PCC then laid a charge in relation to just that. This was repeated later in Dr Youssefi's statement.

[119] Dr Youssefi spoke further about his experiences with Dr [L], whom he described as a dishonest and biased person.

[120] In response to Particular 3(e) which alleges that he said that Dr [L] was crazy, inherently biased and dishonest and that Dr [L]'s comments about his performance were invalid because he had suffered [], Dr Youssefi said in his evidence, "Clearly he was unwell. []. I say he should not have been undertaking the extra work of a prevocational educational supervisor." Dr Youssefi repeated the comments [] about Dr [L] [].

[121] In July 2021 Dr Youssefi enrolled in the BASICS course (an intensive care course) while in Australia. The practical sessions changed three times because of the COVID pandemic and then were eventually cancelled because of COVID concerns and social distancing requirements.

[122] In response to the charges and the PCC's evidence, Dr Youssefi's reply was more in the nature of submissions or potential cross-examination of witnesses, rather than evidence in response. He referred to inconsistencies in statements and/or omissions from records. He went on to say, "I may have been defensive. But I say that is natural, when I was facing allegations, without any prior warning of them, that I had done something, which I had not. It has taken considerable time on my part to prove what was on TDHB's records all the time and that the allegations made by doctors Kumar and Albrett were not true."

[123] Dr Youssefi said that Dr Albrett alleged that he was not a house officer in either orthopaedics or medicine back in 2015, which was clearly false. Dr Youssefi denied getting angry at the meeting on 3 February. More than once in his evidence, Dr Youssefi noted that he was severely sleep-deprived after working three long days, 8 am until 11 pm. He says he has a natural crease on his forehead which appears more prominent when he is lacking in sleep, but that does not mean he was angry, only sleep deprived. He noted that he had worked seven days. He was scheduled to have the day off the next day and he was clearly in no condition to have an hour-long intense interrogation meeting immediately following three days on call from 8 am to 11 pm or doing 77 hours.

[124] On the allegation that Dr Youssefi had said in the February meeting that other house officers were bullying him and/or that people had raised concerns should be subject to an investigation, Dr Youssefi's evidence was that he raised concerns at the meeting that he was being bullied about his name being all over the internet and he was being confronted by staff at work about it. He said he has never insinuated anything as set out in that particular of the charge, nor has he ever meant to point the finger on those grounds. He said that he made it clear that the other doctor had come up to him. He later realised that the other doctor was actually another PGY-1. He understands now that "bullying" was not the right term. He said the other doctor rudely accosted him without warning and accused him of something which did not happen.

[125] On the allegation that he told Dr Albrett that a nurse had been so impressed with his performance that she had praised his performance to the Head of Psychiatry, Dr Youssefi said that Dr Albrett had heard him incorrectly. Dr Youssefi said that Dr Albrett has attempted to cast doubt on everything that he has said. Dr Albrett does not give him the benefit of the doubt and has assumed the worst about him.

[126] Dr Youssefi said that if there was no truth about his statement that Nurse Leonie Fowler had said she might write to the Head of Department about his management of the anaphylaxis case, he does not understand why she did not email him back saying, “What are you talking about?”

[127] Dr Youssefi denied telling Dr Albrett that Nurse Fowler had written to the Head of Department in Psychiatry. He said one of the nurses involved in the anaphylaxis case “may have written” to the Head of Department on how well it was managed.

[128] Dr Youssefi said that his questioning of Dr Albrett’s fitness to be a prevocational supervisor was a communication to his lawyer and not intended to be released. It was a record of his thoughts written in his draft detailed responses to the investigation documents he had received from the PCC. He did not check the final draft carefully enough and they were included in the final version as filed. He said that those comments were retracted during the 7 July 2021 interview he had with the PCC.

[129] In his evidence Dr Youssefi said that Dr Albrett has not demonstrated the patience and impartiality of a trained medical professional who does not discriminate against an employee because of his background. He has done exactly that and discriminated against Dr Youssefi for having a conviction. He made direct reference to the conviction in his letter to the Medical Council Professional Standards team leader on 20 February 2020.

[130] Dr Youssefi said that Dr Albrett did not bother to sit down with him again and just assumed the worst. Dr Albrett wrote to the Professional Standards at the Medical Council without actually identifying facts, following which the CEO withdrew Dr Youssefi’s contract in May 2020 in Urology.

[131] On the allegation that Dr Youssefi said that Dr [L] was crazy, inherently biased and dishonest and that Dr [L]’s comments about Dr Youssefi’s performance were invalid because he had suffered [], Dr Youssefi’s evidence was that the PCC convenor had said they would not be exploring his competence or experience at Whanganui DHB, and yet the charge is in relation to just that.

[132] Dr Youssefi said that his experience was made all the worse at Whanganui DHB because Dr [L] was trying to give him a bad rotation appraisal by trying to coerce other clinical supervisors to write negative things, “to rid him of the hospital”. That is why Dr Youssefi said Dr [L] was a dishonest and biased person.

[133] Dr Youssefi's evidence was that Dr [L] was clearly unwell. [] that, and he should not have undertaken extra work as a prevocational educational supervisor. Statements made by Dr John Van Dalen and Dr Simon Dempsey as to their concerns triggered Dr Youssefi's concerns about the bias against him by Dr [L]. In a letter dated 31 August 2017 to the District Court, Dr John Van Dalen recorded how Dr [L] had attempted to coerce them from issuing a good rotation appraisal. Dr Youssefi said he did not just rely on Dr John Van Dalen's information. He also relied on the [] about Dr [L], and [] which confirmed Dr Youssefi's concerns that Dr [L] had a [] all that time which had not been properly managed.

[134] On the allegation of stating to the PCC in July 2020 that Dr Albrett's concerns were "flagrant lies" and that his concerns regarding his experience were "initial paranoid suspicion", Dr Youssefi's evidence again was that these comments were retracted during the 7 July 2021 interview. Until then he had not realised his draft comments had been included in the final version that was filed.

[135] Dr Youssefi felt that Dr Albrett had not dealt with him in a procedurally fair manner and has constantly cast doubt on Dr Youssefi and never even bothered to hear his side of the story properly or provided an opportunity to address unfounded allegations.

[136] Dr Youssefi does not understand why the house officers who he had never worked with would have reason to hold an opinion on him. He had met them only once in his time at Taranaki Base Hospital.

[137] In responding to the PCC witness statements, Dr Youssefi repeated much of the evidence he had already provided.

[138] Dr Youssefi denied ever making a derogatory remark about someone's professionalism, as alleged by Dr Albrett.

[139] In response to questions about what he had written on his CV, Dr Youssefi denied ever saying he was an observer during the medical run at Whanganui District Health Board.

[140] Dr Youssefi denied saying that Dr [L] was crazy but said that he was unwell. Dr Youssefi's evidence was []. Dr Youssefi again referred to Dr [L]'s [] for about eight years and was apparently seven years into his condition when Dr Youssefi had him as a PES at Whanganui Hospital. [].

[141] Dr Youssefi said that over the last 18 months he has learnt aspects about his defensive/avoidance personality trait and has done several sessions to address these unhelpful features in his personality. He has learnt ways to de-escalate situations that are potentially confrontational by taking a passive assertive approach and being more attentive to the other party. Other strategies are to minimise direct involvement with aggravated individuals by suggesting to the other party that he will answer them in writing and happy to address those matters.

[142] Dr Youssefi said that despite Dr Albrett's claims that he wanted to support him, Dr Albrett did the exact opposite. Dr Youssefi said that Dr Albrett has not demonstrated any concern about his welfare, nor has he displayed qualities expected of a professional clinician holding his position as the clinical director at Taranaki DHB. He was instrumental in the District Health Board being persuaded to remove Dr Youssefi from the urology rotation in May 2020. Dr Youssefi said that Dr Albrett had written in length in his three-page letter to the Medical Council making direct reference to newspaper articles about Dr Youssefi losing name suppression over his court hearing as though the District Health Board did not have this information. On 12 February 2020 Dr Albrett emailed the HR Manager with what turned out to be incorrect allegations. He went directly to the heads of HR and talked behind Dr Youssefi's back without giving him an opportunity to speak to HR and he was removed from his position as house officer arising from unfounded allegations. At paragraph 88.5 Dr Youssefi questioned how fit Dr Albrett is as a prevocational education supervisor. Then at paragraph 90.5 Dr Youssefi said that he never intended to question Dr Albrett's fitness to be a clinical director/prevocational supervisor. Those comments were intended only for his lawyer to read.

[143] Dr Youssefi denied saying to Dr Albrett that the nurses involved had said that it was the best resuscitation they had seen. Rather, he said one of the nurses who was overlooking his management of the anaphylaxis case thought his management was quite good. He then asked the nurse if she could write a letter of recommendation about how well it was managed to the head of department. He denied telling Dr Albrett that she had written the letter but said one of the nurses involved may have written to the HOD in Psychiatry.

[144] As for the anaphylaxis case he was not on call but went to assist. Dr Youssefi continued to give evidence about what assistance he had provided into acute situations, including the anaphylaxis case.

[145] Dr Youssefi said that after the acute situation he was followed by Dr Goodwin who accosted him and accused him of not helping, in a rather authoritarian manner, leading Dr Youssefi to believe that he was a senior registrar. Dr Youssefi had raised that interaction with another staff member on the ward and was told that “Dr Goodwin is not so stable or confident”. Dr Youssefi’s evidence was then that “Having said this, I do not believe in casting blame on others, rather these experiences help us improve for the next patient.”

Cross-examination of Dr Kumar

[146] When asked about the allegation that Dr Youssefi had said that the other house officers had bullied him, he said:

I used the description that I was being accosted in the hallway. I felt intimidated and I think they inferred that I said "bullying" but I didn't.

[147] Dr Youssefi reiterated that his comments about bullying to do with his name being all over the internet.

[148] On the question of whether Dr Youssefi said that Dr [L] was “crazy”, Dr Youssefi said he did not recall using that word. When asked whether it was possible that he did say that, Dr Youssefi had difficulty focusing his answer on the question, instead referring to evidence to support the conclusion that Dr [L] had been mentally unwell.

John van Dalen

[149] Mr John van Dalen is an Orthopaedic Surgeon and Head of Department of Orthopaedics at Whanganui Hospital. He was one of two consultants on Dr Youssefi’s three-month Orthopaedic Surgical attachment at that hospital in mid-2015. Both consultants assessed Dr Youssefi as having passed the attachment satisfactorily.

[150] Dr [L] was the RMO Educational Supervisor at that time. He asked both consultants to revise their assessments. This was most unusual and unprecedented in Mr van Dalen’s experience. Neither felt there was any reason to change their assessment appraisals.

Glenda Huston

[151] Nurse Glenda Huston is an enrolled nurse who worked with Dr Youssefi on the Psychiatry Ward. Her evidence was of his good character, included her opinion that he

was an “above average House Officer who was proactive and responsive to the needs of all his patients”.

[152] Nurse Huston also said that there was “chatter about Dr Youssefi’s name being all over Google, in regards to his court dealings”. This was not elaborated on. Nurse Huston was not required for cross-examination.

Edwin Whiteside

[153] Dr Edwin Whiteside is a senior physician with specialist experience in Addiction Medicine and Occupational Medicine. For the past 30 years he has also co-ordinated the activities of the Doctors Health Advisory Service and is a member of the Australian Medical Associations Expert Advisory Committee for Doctors’ Health.

[154] Dr Youssefi’s lawyer referred him to Dr Whiteside in January 2018 because of concerns about the impact of the Medical Council investigation and subsequent court proceedings on Dr Youssefi’s mental health. Dr Youssefi was offered collegial support and advice on seeking appropriate counselling.

[155] Dr Whiteside has been increasingly concerned about the continuing difficulties Dr Youssefi has faced in finding suitable employment and coping with ongoing legal matters. Dr Youssefi accepted the Medical Council Health Committee’s recommendation to continue with independent psychological counselling which has resulted in significant changes. Dr Youssefi has become much more amenable to change when working with others and being more positive when challenged.

Factual findings

[156] The onus of proof is on the PCC to prove the allegations that have been made. The standard of proof is on the balance of probabilities. In *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 Elias CJ discussed the notion of “flexibility” of the standard of proof, concluding:⁵

Proof is made out whenever a decision-maker is carried beyond indecision to the point of acceptance either that a fact is more probable than not...

[157] In the majority judgment in *Z*, the discussion continued:⁶

⁵ At [28]

⁶ At [101]

... it is not the position that flexibility is “built into” the civil standard, thereby requiring greater satisfaction in some cases. Rather the quality of the evidence required to meet that fixed standard may differ in cogency, depending on what is at stake.

[158] On the matter of drawing inferences, the Tribunal has expressed the position:⁷

Inferences are logical conclusions from proven facts. It is well established that a fact-finding body such as the Tribunal can properly draw logical inferences, providing it does so on the basis of facts which are proved to its satisfaction. It cannot speculate or guess.

[159] *Rabih v Professional Conduct Committee of the Dental Council*⁸ is the leading authority for the test for credibility. The High Court said “no issue could be taken” with the following principles applied by the Tribunal, adopting a passage from an earlier Tribunal decision,⁹ where it was said:

26. The test for “credibility” was stated by a Canadian appellate court (in *Faryna v Chorny* [1952] 2 DLR 354 (BCCA)) as being that the real test of the truth of the story of a witness must be at harmony with the preponderance of the probabilities which are practical, and which an informed person would readily recognise as reasonable in that place and in those conditions.
27. Accordingly, the Tribunal, where relevant, must consider such factors as:
 - (a) The manner and demeanour of the witness when giving evidence.
 - (b) Issues of potential bias, that is, to what extent was evidence given from a position of self interest.
 - (c) Internal consistency or, in other words, whether the evidence of the witness was consistent throughout, either during the hearing itself, or with regard to previous statements.
 - (d) External consistency or, in other words, was the evidence of the witness consistent with that given by other witnesses.
 - (e) Whether non-advantageous concessions were freely tendered.
28. Essentially, what is involved is an analysis of all the evidence, rather than merely asserting that one party rather than another is to be believed.

General comments

[160] The Tribunal does not need to make any findings about Dr Youssefi’s clinical competence or whether he handled two emergency situations appropriately. Nor is it

⁷ *Gilgen* 149/Med07/60 at [35]

⁸ [2015] NZHC 1110

⁹ Referred to as *Mr Y*, 197/Phar08/99P. Name suppression was lifted in the penalty decision, *May* 222/Phar08/99P

necessary to make any findings about Dr [L]'s mental stability at the time Dr Youssefi worked with him, or whether Dr [L]'s assessment of Dr Youssefi was accurate or justified.

[161] Our task is to make findings on the factual allegations in the charge, and then, taking into account the factual circumstances of the established conduct, decide whether the established conduct meets the threshold for a disciplinary sanction, as outlined in the summary of the law below, under "Grounds for discipline".

[162] The Tribunal recognises that the approach Dr Albrett and Dr Kumar adopted in addressing the concerns might have been smoother. As Dr Albrett acknowledged in hindsight it would have been preferable to put some distance between the initial purpose of the meeting on 3 February, which was to ensure Dr Youssefi's wellbeing and offer support, and the discussion about apparent discrepancies between his CV and the ePort. It was those discrepancies which led to the referral to HR and the subsequent withdrawal of employment. The Tribunal acknowledges that the conflation of the inaccuracies on the ePort record with the concerns raised about his wellbeing may have resulted in a confused process and may have contributed to Dr Youssefi's defensive response.

[163] The Tribunal accepts the PCC submission that Dr Albrett and Dr Kumar were reliable and credible witnesses. Although there were no contemporaneous notes or audio-recordings made of the meeting on 3 February 2020, later that day, Dr Kumar recorded some bullet-points in an email summarising their concerns. There was no reason for these senior doctors to fabricate their evidence. The Tribunal did not find they were mistaken as to what they heard Dr Youssefi say.

[164] Dr Youssefi, on the other hand, had difficulty focusing his responses to the questions asked. As with his statement of evidence, he tended to make submissions, referring to other evidence to justify his position, and failed on many occasions to answer the question being put to him, despite being directed to do so by the Chair. This meant that at times the reliability of his memory and credibility suffered.

Conviction

[165] There is no dispute that Dr Youssefi was convicted of an offence under section 257(1)(b) of the Crimes Act 1961 of knowingly using a forged document. Therefore, the factual foundation for particular 1 is established.

Professional misconduct particulars

[166] We now turn to the sub-particulars of Particular 3 that relate to Dr Youssefi's conduct during the meeting of 3 February 2020, the PCC's evidence is found in the statements of Dr Albrett, Dr Kumar and Nurse Fowler.

- (a) *Behaving aggressively and/or unpleasantly during a meeting with Dr Albrett and Dr Kumar in February 2020 to discuss concerns about Dr Youssefi's competence;*

[167] The Tribunal found that Dr Youssefi behaved unpleasantly. This is based on the description of him being angry, extremely defensive, reacting by making allegations against others and his comments about Dr [L], which we also discuss later. Although the anger was such that there were concerns about his future interactions with the other house officers, we do not find that there was sufficient evidence to support a finding of behaving "aggressively" at that meeting. But on the basis that the Tribunal found that he behaved unpleasantly, the factual allegation in particular 3(a) is established.

- (b) *Stating to Dr Albrett in a meeting in February 2020 that other House Officers were bullying him and/or that the people who had raised concerns about his response to a medical emergency should be subject to an investigation;*

[168] Both Dr Albrett and Dr Kumar gave evidence that the Dr Youssefi said that the House Officers were bullying him. Dr Youssefi said his use of the word "bully" was in relation to staff bullying him about his name being all over the internet. He did not elaborate on who specifically was responsible for this or how this bullying had taken place.

[169] Dr Youssefi's witness, Nurse Huston, said that there was a lot of "chatter about Dr Youssefi's name being all over Google, in regards to his court dealings". There was no evidence of what, if anything, was said to Dr Youssefi about this and in what way he may have been bullied about this criminal history.

[170] In the context of the two matters that Dr Albrett was raising with Dr Youssefi, it is unclear why Dr Youssefi would have referred to people other than the two House Officers bullying him. Dr Kumar and Dr Albrett did not refer to this and it was not put to them in cross-examination. In fact, Mr Dean's line of questioning in cross-examination of Dr Albrett accepted Dr Youssefi's use of the word bullying in relation to one of the House Officers:¹⁰

¹⁰ Transcript of Evidence p77, lines 26 to 31

What you are acknowledging on this one incident, it may have been mischaracterised as bullying, that was the word Dr Youssefi used, but in fact it would have been characterised as being apprehended in the passageway without any prior notice and spoken to somewhat rudely by Dr Goodwin?

[171] In cross-examination, Dr Youssefi's evidence was not consistent. Dr Youssefi said on the one hand, that he used an "incorrect description" and on the other hand that he did not use the word bully to describe the situation. The following examples illustrate this:¹¹

Q. Did you say that one or more of these doctors were bullying or have bullied you or words to that effect?

A. I think I corrected that in my brief, that bullying was not the appropriate word but I felt accosted in the hallway.

...

Q. Dr Kumar and Dr Albrett both gave evidence that you had described other doctors as bullying you, not in the context you've just described.

A. Yeah, I think –

Q. Just wait. Do you disagree with their evidence on that point?

A. I disagree with the description I used. I used an incorrect description of the scenario, I said, yeah.

Q. Just for the record, you are disagreeing with Dr Kumar and Dr Albrett when they effectively said that you said that Dr Goodwin had been bullying you; you disagree with that?

A. I used the description that I was being accosted in the hallway. I felt intimidated and I think they inferred that I said "bullying" but I didn't.

[172] The Tribunal finds the evidence of Dr Albrett and Dr Kumar is more reliable and more credible. It is more likely than not that Dr Youssefi responded to the concerns raised with counter-allegations that the House Officers bullied him. The evidence does not establish that he used the words that his colleagues should be subject to investigation but, on the basis that he said that they were bullying him, the factual allegation in particular 3(b) is established.

(c) *Stating incorrectly to Dr Albrett during a discussion about concerns with his performance that a nurse had been so impressed with his performance that she had praised his performance to the head of psychiatry;*

¹¹ Transcript of Evidence p 215, lines 25 to 29, p 216, lines 15 to 22

[173] Both Dr Albrett and Dr Kumar recall Dr Youssefi saying that a nurse was so impressed that she had emailed the Head of Department. Dr Youssefi's evidence was that the nurse had said that Dr Fowler "may have written" to the Head of Department.

[174] The Tribunal finds it is more likely than not that Dr Youssefi did say that the nurse had praised his performance to the head of psychiatry. It is unlikely that both Dr Albrett and Dr Kumar would have misheard Dr Youssefi. Dr Albrett was certain that Dr Youssefi had told him that an email was sent, and that the Head of Department had said, "Well done". It stuck in his mind as something that could be verified by speaking to the Head of Department. Dr Kumar referred to this in the notes he made an email that was sent to Dr Albrett following the meeting and Dr Kumar followed up with the Head of Department, Dr Shetty.

[175] Nurse Fowler denies offering to email the Head of Department or doing so. Dr Shetty did not receive an email. She did not praise his performance to the Head of Psychiatry. The Tribunal finds it is unlikely that she would have made this offer and we accept her evidence. Therefore, the statement Dr Youssefi made about this was "incorrect". Particular 3(c) is therefore established.

(d) *Questioning the fitness of Dr Albrett to act as a Prevocational Educational Supervisor;*

[176] In his response to the PCC investigation documents, Dr Youssefi recorded "I find this rather immature and naïve and I really now question how fit Dr Albrett is as a Prevocational Educational Supervisor." Dr Youssefi tried to resile from this statement saying that it was only meant for his lawyer and not meant to be submitted to the PCC.

[177] This explanation was not accepted by the PCC. The Tribunal might have been more receptive to this argument had Dr Youssefi not repeated this in his evidence at paragraph 88.5. Dr Youssefi retracted that in cross-examination, saying it was a typographical error. This was despite reading that evidence out when he was under oath. He had made other alterations and addition to other aspects of his evidence while reading the statement, but not this one. It was only when he was questioned further on cross-examination that he tried to alter that evidence. This was in a statement prepared for and filed in advance of the hearing and it was the amended statement that had been prepared the night before he gave evidence. Given the detailed responses that Dr Youssefi made to the evidence

filed by the PCC, and the consistency of this statement with the one submitted to the PCC, that is not a plausible explanation.

[178] The Tribunal found that Dr Youssefi questioned the fitness of Dr Albrett to act as a Prevocational Educational Supervisor. Particular 3(d) is established.

(e) Stating that Dr [L] was crazy, that he was inherently biased and dishonest, and that Dr [L]'s comments about his performance were invalid because he had []; and/or

[179] The evidence of both Dr Albrett and Dr Kumar was that Dr Youssefi said that Dr [L] was “crazy”. Dr Youssefi accepted saying that Dr [L] was biased but denied using the word crazy but said he would have said that Dr [L] was unwell.

[180] Dr Youssefi is clearly aggrieved, feeling that Dr [L]'s report of him was unwarranted. The Tribunal recognises the possibility that at the time Dr [L]'s mental health was suffering such that any opinion he had of Dr Youssefi's performance was invalidated, and Dr Youssefi may be justifiably frustrated. However, Dr Youssefi's indignation seems to have become a fixation, []. This obsession tends to support the use of unprofessional language when talking about Dr [L].

[181] Had Dr Youssefi used the word “unwell” to describe Dr [L], it would have been unremarkable for Dr Albrett and Dr Kumar. They both recall the use of the word crazy. The Tribunal prefers their evidence and finds that he did use that word.

[182] The evidence does not establish that Dr Youssefi said that Dr [L] suffered from []. Rather, Dr Kumar's evidence was that Dr Youssefi said Dr [L] was “paranoid” [].

[183] Although there was no evidence before the Tribunal that Dr Youssefi referred to Dr [L] as dishonest during the 3 February meeting, the particular of the charge does not specify the timing of these comments. Mr Waalkens referred to such statements in Dr Youssefi's communication with the PCC, as found in the Agreed Bundle of Documents:

I could no longer trust Dr [L]¹²

Dr [L] has tried to alter my rotation assessment by trying to coerce my two consultants Dr John van Dalen and Dr Simon Dempsey. Then he tries again a month and a half later, he attempts to scribble on top of my assessment, attempting to smear my rotation, both on paper and ePort, by recording false statements¹³

¹² Agreed Bundle of Documents page 380

¹³ Agreed Bundle of Documents page 396

I feel considering that Dr [L] lied and also attempted to coerce my consultants in order to meet his objective, how can his statement in the Stand Down letter be taken as correct.

[184] Dr Youssefi is charged with saying that Dr [L] was dishonest. That is not exactly what these excerpts establish. He has said he could not trust Dr [L], that he recorded false statements and questioned how a statement in a letter can be taken as correct.

[185] The PCC evidence does not establish that Dr Youssefi said that Dr [L] was dishonest. There is an argument that because the particular is not drafted with the options of “and/or”, then the PCC must prove all aspects of the particular, that is if it is not established that Dr Youssefi said all three things about Dr [L], then particular 3 (e) must fail. However, it is also open to the Tribunal to amend the charge. There is no prejudice to Dr Youssefi to do so. The Tribunal finds that Dr Youssefi said that Dr [L] was crazy and biased and particular 3(e) is amended accordingly to reflect those findings.

(f) *Stating that to the PCC in July 2020 that Dr Albrett’s concerns were “flagrant lies” and that his concerns regarding his experience were “initial paranoid suspicion”.*

[186] The evidence to support particular 3(f) is found in Dr Youssefi’s statement provided to the PCC, and contained in the Agreed Bundle of Documents as outlined above at paragraph 72 in the summary of Dr Hogg’s evidence. It is headed: Teimur Youssefi at MCNZ – Professional Conduct Committee Dr Teimur Youssefi Responses to the Investigation Documents. There is a column headed “Teimur Youssefi Response” and another one with “Comment”.

[187] Dr Youssefi said that this was disclosed to the PCC in error. The document is similar to both witness statements presented to the Tribunal in that it is in table form with comments. The Tribunal agrees with Dr Hogg that there is nothing about the document that indicates it is a draft, or not intended for the PCC’s view.

Grounds for discipline

[188] The Tribunal must decide whether the established facts warrant discipline. Section 100 of the Act sets out the 7 grounds for which a health practitioner may be disciplined. The PCC relies on the first three found in section 100(1)(a), (b) and (c):

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—
 - (a) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, amounts to malpractice or negligence in relation to the scope of practice in respect of which the practitioner was registered at the time that the conduct occurred; or
 - (b) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, has brought or was likely to bring discredit to the profession that the health practitioner practised at the time that the conduct occurred; or
 - (c) the practitioner has been convicted of an offence that reflects adversely on his or her fitness to practise.

Conviction reflecting adversely on fitness to practise

[189] Dealing first with the conviction contained in Particulars 1 and 2 of the Charge, the Tribunal may make a finding under section 100(1)(c) only if the conviction is of a kind described in section 100(2), which includes a conviction for an offence punishable by imprisonment for a term of 3 months or longer.

[190] There was no dispute that Dr Youssefi was convicted of one charge of knowingly using a forged document under section 257(1)(b) of the Crimes Act 1961.

[191] A conviction under section 257(1)(b) of the Crimes Act 1961 is a qualifying offence, given it carries a maximum penalty of 10 years' imprisonment. It is not necessary that the maximum penalty is imposed, simply that there is a conviction for such an offence.

[192] The next question is whether the conviction reflects adversely on Dr Youssefi's fitness to practise as provided under section 101(1)(c).

[193] It is well established that the term "fitness to practise" extends beyond clinical competence issues. In *Professional Conduct Committee v Martin* 27 February 2007, CIV 2006-485-1461 at [46] Justice Gendall stated:

"Fitness" often may be something different to competence ... aspects of general deterrence as well as specific deterrence remain relevant. So too is the broader consideration of public or community's confidence and the upholding of the standards of the nursing profession.

[194] In *Sathe* 568/Den13/246P, the Tribunal summarised the relevant principles established in some High Court and Tribunal decisions:

- a) It is not necessary that a relevant conviction conclusively demonstrates that the practitioner is unfit to practise, although there is a high threshold to be met – namely, the conviction must raise serious questions about whether a practitioner is fit to practise (*PCC v Martin*, High Court 27 February 2007, CIV 2006-485-1461, Gendall J, at [17]).
- b) A determination of "fitness to practise" does not relate solely to the practitioner's clinical ability or confidence:
 - It includes a consideration of whether the practitioner's conduct was immoral or unethical (*Murdoch*, 76/Phys06/45P).
 - It involves a consideration of character (*Pellowe* 137/Phar/07/74P)).
 - That the conviction is likely to bring discredit to the profession, this may well indicate that it reflects adversely on fitness to practise, although that is not in itself determinative (*Pittwood* 84/Ost06/42P).
- c) There are many previous cases where convictions for dishonesty or fraud have led the tribunal to conclude that those convictions reflect adversely on fitness to practise including *Pellowe* (137/Phar07/74P), *Chiew* (180/Phar08/95P) and *Bain* (387/Nur11/176P).
- d) In *Condon* (23/Nur05/13P) the Tribunal stated "... 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 the practitioner has let both herself down and the public." That is, a breach of trust may well reflect adversely on practice.

[195] This Tribunal has on many occasions held that dishonesty convictions reflect adversely on a practitioner's fitness to practise. This has included cases involving fraudulent claims for government funding,¹⁴ and theft from individuals.¹⁵

[196] The PCC referred to some cases where the Tribunal found that similar convictions reflected adversely on a practitioner's fitness to practice:

- (a) In *PCC v Shi* 1099/Phys20/477P, a physiotherapist was convicted of three charges of forgery under section 256(1) of the Crimes Act and three of dishonestly using a document under section 228(1)(b). The conduct involved submitting documents in support of bank loan applications.

¹⁴ *PCC v Murdoch* 76/Phys06/45P

¹⁵ For example, *PCC v Condon* 23/Nur05/13P

- (b) In *PCC v Kenny* 990/Chiro18/421P, a chiropractor was convicted of one charge of dishonestly using a document under section 228(1) of the Crimes act where he submitted ACC claim forms for services not actually performed.
- (c) *PCC v McCaig* 704/Med14/299P where a medical practitioner was charged with professional misconduct for forging and falsifying documents provided to the Medical Council of New Zealand (MCNZ) for the purpose of gaining general registration.

[197] Mr Deans did not submit that the conviction does not reflect adversely on Dr Youssefi's fitness to practise. Rather he focused on whether a conviction and discharge is a basis for discipline, whether Dr Youssefi was discharged, and what relevance the maximum prison penalty has. Mr Deans said that Dr Youssefi was not discharged; he was sentenced.

Discussion

[198] Section 108 of the Sentencing Act 2002 provides that if a person is convicted of an offence, the court may direct that the offender be discharged rather than sentenced, unless the offence carries a minimum sentence. In paragraph 21 of District Court sentencing notes, the judge has recorded:

[21] In terms of sentencing, I have thought long and hard about the appropriate sentence. The recommendation in the pre-sentence report is one of community work. ... In the circumstances I am satisfied that the conviction alone is sufficient...

[199] The Judge did not use the words, "convicted and discharged", but where no penalty is imposed, it follows that Dr Youssefi was discharged. In any event, the catalyst for activating section 100(1)(c) as a ground for discipline is a conviction for a qualifying offence. There is no doubt that Dr Youssefi was convicted, and the offence is one which is "punishable by imprisonment for a term of 3 months or longer" as provided in section 100(2)(b).

[200] The Tribunal accepts the submissions made on behalf of the PCC. As noted by the District Court, Dr Youssefi's offending was premeditated and planned and involved a deception of the Medical Council.¹⁶ And similarly in the High Court¹⁷:

¹⁶ Notes of Judge PAH Hobbs on Sentencing *Police v Youssefi* [2018] NZDC 3093

¹⁷ *Youssefi v Police* [2018] NZHC at [24]

The level of gravity was not low. The offending involved a serious ethical breach in deliberately deceiving a regulatory body tasked with ensuring, inter alia, the safety of patients.

[201] There are numerous decisions where the Tribunal has found that a sole conviction or multiple convictions involving dishonesty reflect adversely on a practitioner's fitness to practise.¹⁸ Dr Youssefi had intentionally altered a document to mislead the Medical Council. The Tribunal has no hesitation in finding that a conviction for submitting a document that Dr Youssefi knew was forged to the regulator whose primary purpose is to protect the health and safety of members of the public,¹⁹ reflects adversely on his fitness to practise.

Professional misconduct

[202] The Tribunal found that at a meeting on 3 February 2022 Dr Youssefi:

- behaved unpleasantly in his interactions with Dr Albrett and Dr Kumar (particular 3(a))
- said that his colleagues had bullied him (particular 3(b))
- said a nurse, was so impressed with his performance that she had praised his performance to the Head of Department, particular 3(c))
- said that Dr [L] was crazy and biased (particular 3(e))

[203] The Tribunal also found that in his communication with the PCC and in his evidence before the Tribunal Dr Youssefi questioned the fitness of Dr Albrett to act as a PES and said that Dr Albrett's concerns were flagrant lies and initial paranoid suspicion.

[204] Tribunal and the Courts have considered the term "professional misconduct" under section 100 (1)(a) of the HPCA Act on many occasions. In *Collie v Nursing Council*, Gendall J said:²⁰

Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

¹⁸ For example, *Quistorff* 718/Med15/308P; *Bhatia* 345 Med10/155P; *Condon* 23/Nur05/19P; *Winefield* 60/Phar06/30P

¹⁹ Health Practitioners Competence Assurance Act 2003, section 3(1)

²⁰ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [21]

[205] “Malpractice” has been accepted as meaning “the immoral or illegal or unethical conduct or neglect of professional duty. Any incidence of improper professional misconduct”.²¹

[206] The Tribunal has adopted the test for bringing, or likely to bring “discredit to the practitioner’s profession” from the High Court decision on appeal from the Nursing Council. The Tribunal must ask itself:²²

... whether reasonable members of the public, informed and with knowledge of all the factual circumstances, could reasonably conclude that the reputation and good-standing of the [profession] was lowered by the behaviour of the [practitioner] concerned.

[207] Determining professional misconduct is approached in two steps. This has been expressed:

- (a) The first step involves an objective analysis of whether or not the health practitioner’s acts or omissions in relation to their practice can reasonably be regarded by the Tribunal as constituting malpractice and/or negligence and/or conduct having brought or likely to bring discredit to the profession.
- (b) The second step in assessing professional misconduct requires the Tribunal to be satisfied that the practitioner’s acts or omissions require a disciplinary sanction. In *F v Medical Practitioners Disciplinary Tribunal*²³ the Court of Appeal, in considering the disciplinary threshold under the Medical Practitioners Act 1995 said:

In cases of both professional misconduct and conduct unbecoming it will be necessary to decide if there has been a departure from acceptable standards, and then to decide whether the departure is significant enough to warrant sanction.

[208] The High Court endorsed the earlier statement of Elias J in *B v Medical Council* [2005] 3 NZLR 810 that “the threshold is inevitably one of degree”. This was further discussed in *Martin, HRE v Director of Proceedings* where the High Court said:²⁴

... While the criteria of “significant enough to warrant sanction” connotes a notable departure from acceptable standards, it does not carry any implication

²¹ *Collins English Dictionary* 2nd Edition. Definition accepted in many cases, including *Leach* 389/Nur11/179P and *Rodrigues* 384/Ost11/173P.

²² *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [28]

²³ Noted at 2005 3 NZLR 774

²⁴ *Martin v Director of Proceedings* [2010] NZAR 333 at [32]

as to the degree of seriousness. Given the wide range of conduct that might attract sanction, from relatively low-level misconduct to misconduct of the most reprehensible kind, the threshold should not be regarded as unduly high. It is certainly a threshold to be reached with care, having regard to both the purpose of the HPCAA and the implications for the practitioner, but the measure of seriousness beyond the mere fact that the conduct warrants sanction is a matter to be reflected in penalty. The degree of seriousness does not form part of the Tribunal's enquiry at the second stage of the two-step process.

[209] This two-step test has been adopted by this Tribunal since its first decision, *Nuttall* 8/Med04/03P issued in 2005.

PCC submissions on professional misconduct

[210] On the question of disciplinary threshold, Mr Waalkens referred to "Good Medical Practice", a publication developed by the Medical Council as a foundation for standards of clinical competence, cultural competence and ethical conduct for doctors.²⁵ The PCC submitted that the following paragraphs are relevant:

39. You must be aware of the impact of your conduct on members of your practice team and colleagues, and how that may affect quality care and treatment for patients.

40. You should respect the skill and contributions of your colleagues.

41. Treat your colleagues courteously, respectfully and reasonably. Do not bully or harass them. You must not you discriminate against colleagues.

42. Do not make malicious or unfounded criticisms of colleagues that may undermine patients' trust in the care or treatment they receive, or in the judgement of those treating them.

43. You must always strive to work with managers and administrators in a constructive manner to create and sustain an environment that upholds good medical practice ...

...

59. You must cooperate fully with any formal enquiry or inquest (although you have the right not to give evidence that may lead to criminal proceedings being taken against you). When you provide information you must be honest, accurate, objective and the information provided must be based on clear and relevant clinical evidence.

...

²⁵ Good Medical Practice, Medical Council of New Zealand, December 2016.

69. If a colleague raises concerns about your practice, you should respond constructively.

[211] *Good Medical Practice* further says that doctors must “work cooperatively with, and be honest, open and constructive in your dealings with managers, employers, the Medical Council, and other authorities.”²⁶

[212] The PCC referred to another Medical Council publication, “Unprofessional Behaviour and the Healthcare Team. Protecting patient safety” of August 2009. The following extracts are from that document:

Chronic and repetitive inappropriate behaviour that adversely affects the effective functioning of other staff and is unprofessional.

Single or intermittent severe impulse control problems are out of proportion to precipitating stressors would also be considered unprofessional behaviour.

Unprofessional behaviours can include: bullying or intimidation; threats of violence; retribution or vexatious litigation; passive aggression; and unwillingness to discuss issues with dependent colleagues in a cordial and respectful manner.

[213] The PCC referred to the following cases:

(a) In *Dr Mendel 977/Med 17/394P* a psychiatrist was charged with (amongst other things) unprofessional behaviour towards his colleagues. The Tribunal found the following conduct was unprofessional; saying to Registrars he was supervising, that other doctors were “a psychopath”, “a narcissist”, “an alcoholic”, “a nasty piece of work”, “has poor clinical practice”, and that a fellow doctor “functions at the level of a junior Registrar and does not know what he is doing”. The remarks were found to be professional misconduct but only warranted sanction cumulatively with other misconduct.

(b) In *Drury 500/Psy12/216P*, a psychologist failed to comply with policy as to comprehensive written assessments and failed to refer a patient appropriately and accurately. He also made inappropriate comments to patients and caregivers, made critical and derogatory comments to social

²⁶ Good Medical Practice, page 7.

workers and adopted an unhelpful and sarcastic attitude in meeting members of his team. Considered cumulatively, the Tribunal found the charge established and in finding that discipline was warranted the Tribunal noted there was a range of patients and colleagues involved, a range of acts and omissions in 11 different matters over the space of two and a half years.

Respondent submissions on professional misconduct

[214] Much of Mr Dean's submissions were addressed onto the facts.

[215] For the Respondent Mr Dean categorised Dr Youssefi's evidence as a good example of an Avoidant Personality Disorder trait. Mr Dean could not imagine how Dr Youssefi would have got angry or aggressive with the two doctors when they met him in their role as providing pastoral care for a young PGY1 doctor.

[216] Mr Dean made submissions about the context in which the 3 February meeting occurred. Dr Youssefi had been working over the weekend, attended a meeting at which he was then questioned or "put on the mat" by two senior doctors. Mr Dean submitted that there is an irony that Dr Youssefi has used the word "paranoid" but it is Dr Youssefi who is the one who is suffering from a degree of paranoia arising from [health condition]. Mr Dean referred to a report dated 8 December 2020 from Ms Fariha Khan, psychologist, which was included in the bundle of documents. Mr Dean queried whether it was any wonder that Dr Youssefi behaved the way he did, knowing that Dr Youssefi has [health condition], faced with the meeting of 3 February and what was presented to him.

Discussion

[217] Having found that most of the conduct in particular 3 is established, it does not automatically follow that the test for professional misconduct is made out. The Tribunal finds that Dr Youssefi's response to the matters raised was not professional or appropriate. It is not expected that a medical practitioner will receive criticism with robotic objectivity and some degree of emotion in responding may be a normal reaction. However, both Dr Albrett and Dr Kumar found that Dr Youssefi's reaction was out of the ordinary. This was more than being upset or defensive. Dr Kumar said that he had encountered people being defensive and making counter-allegations, but he had not often come across people who bring anger into that as well. Dr Albrett described the

encounter as rapidly escalating into counter-allegations in a way Dr Albrett had not experienced before.

[218] Dr Youssefi's conduct was a departure from expected standards outlined in Good Practice, mainly in the last one cited by the PCC, which is the expectation to respond constructively if a colleague raises concerns. Therefore, the definition of negligence is met.

[219] The allegations made against Dr [L] and the two House Officers were done in the context of a welfare meeting with two senior practitioners and in his communication with the PCC. They were not raised in the clinical setting or in a way that might compromise the care of a patient. Dr Youssefi did express his opinions to a number of his peers or to his junior colleagues as in the case of *Dr Mendel*. The potential damage to the clinical team or to the reputation of the medical profession was very much contained.

[220] Because of the context in which this behaviour occurred, we find it unlikely a reasonable member of the public would consider the reputation of the medical profession is lowered by this conduct, and therefore it does not amount to conduct likely to bring discredit to the profession.

[221] The way in which Dr Youssefi expressed his opinion about Dr [L] was not professional and understandably surprised Dr Albrett and Dr Kumar. Dr Youssefi's statement that Nurse Fowler was so impressed with his performance that she praised his performance to the Head of Department was untrue and was therefore unethical and amounts to malpractice, albeit at the low end of the scale.

[222] Overall, Dr Youssefi's lack of moderation and professionalism in his statements about Dr [L] and Dr Albrett raise concerns about his fitness to practise that are better addressed by the Medical Council processes. This conduct in isolation is not sufficiently serious to warrant a disciplinary sanction.

[223] The PCC also alleged that the conduct that was the subject of the conviction amounts to professional misconduct under section 100(1)(a) or (b). The Tribunal finds that Dr Youssefi's intentional falsification of documents filed with this regulator in support of his application for registration was dishonesty of a serious nature. It is analogous to the decision of *McCaig* where the Tribunal had no difficulty in finding that the conduct was likely to bring discredit to the profession. In that case we said:

It is essential that medical practitioners are honest in all their dealings. Completion of forms is an integral part of a medical practitioner's career and working life. The profession and the public rely on medical practitioners to complete forms accurately and correctly. No document should be forged by a medical practitioner (as with any other person); and then to use the forged form for Dr McCaig's own benefit made matters worse and would be viewed objectively by the public as bringing the profession into discredit.

[224] We also find that the conduct that was the subject of Dr Youssefi's conviction was immoral, illegal, unethical conduct and neglect of his professional duty. It therefore amounts to malpractice. The conduct was also of a sufficient degree of seriousness to warrant a disciplinary sanction. Such dishonesty in an attempt to undermine the process for registration set up under the Act, the principal purpose of which is to:

“protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their profession”.²⁷

[225] When viewed cumulatively the forgery covered by particular 1 and the unprofessional conduct in particular 3 amount to professional misconduct and warrant a disciplinary sanction.

Penalty

[226] Having found the charge is established, the Tribunal may now consider whether the conduct requires a disciplinary sanction for the purposes of protecting the public and maintaining professional standards. Section 101 provides for the following penalties:

- (a) Cancellation of registration.
- (b) Suspension of registration for a period not exceeding three years.
- (c) Conditions imposed on practising certificate.
- (d) Censure.
- (e) Payment of costs of the Tribunal and/or PCC.

[227] In *Roberts v Professional Conduct Committee*,²⁸ His Honour Justice Collins discussed eight relevant factors in determining an appropriate penalty in this

²⁷ Section 3 of the Act

²⁸ [2012] NZHC 3354 at [44] to [51]

jurisdiction. These factors have been summarised in the decision of *Katamat v Professional Conduct Committee* [2012] NZHC 1633:

1. Most appropriately protects the public and deters others;
2. Facilitates the Tribunal's "important" role in setting professional standards;
3. Punishes the practitioner;
4. Allows for the rehabilitation of the health practitioner;
5. Promotes consistency with penalties in similar cases;
6. Reflects the seriousness of the misconduct;
7. Is the least restrictive penalty appropriate in the circumstances; and
8. Looked at overall, is a penalty which is "fair, reasonable and proportionate in the circumstances".

PCC submissions

[228] The PCC referred to the decisions of *Drury* and *Mendel* cited above as well as *Dr McCaig* 704/Med14/299P where the medical practitioner admitted professional misconduct by forging and/or falsifying documents provided to the Council for the purposes of gaining general registration. In particular, she typed and signed a letter of support in the name of another doctor and forged another doctor's signature on her End of Run Assessment form.

[229] And in *Dr E* 1074/Med 19/451P, a doctor stated on her CV that she had obtained a post graduate diploma in surgical anatomy, when it had not in fact been completed. The CV was submitted to the General Medical Council in the United Kingdom for temporary registration. She also amended a letter saying that she had completed three of the four papers to say that she had repeated all four of the papers required for the diploma.

[230] The PCC referred to the following aggravating features of the case:

- (a) Deliberate dishonesty and breach of trust: The Courts stated that Dr Youssefi's conviction related to conduct that was pre-meditated and planned, dishonest and involved a deception on the Medical Council.

- (b) Safety issues as to patients: As stated by Thomas J in the High Court decision, “The offending involved a serious ethical breach in deliberately deceiving a regulatory body tasked with ensuring, inter alia, the safety of patients ... the body tasked with ensuring safety was prevented from obtaining a full picture as to the need for safeguards.”
- (c) Breaches of professional standards: The unprofessional behaviour has the potential to impact on patient safety and undermine the effective working of a health care team. Dr Youssefi’s responses to feedback were inappropriate and disrespectful, and fell well short of what is expected in a professional environment.
- (d) Lack of insight or responsibility: Dr Youssefi has consistently failed to recognise that his responses were inappropriate and disrespectful, blamed others, and failed to take any personal responsibility or show insight into the conviction. He continued to misrepresent the nature of his conviction, as noted by the Court of Appeal.²⁹
- (e) Continued unfounded and disrespectful accusations: Dr Youssefi made accusations against Dr [L]. He also made accusations about Dr Albrett, Dr Kumar and the fellow PGY-1 doctors who raised concerns about his wellbeing. These accusations were largely unfounded and irrelevant to the concerns at hand. The allegations about Dr [L] were particularly egregious and demonstrated a lack of insight.

[231] The PCC acknowledged the following mitigating factors:

- (a) Dr Youssefi’s difficult personal circumstances and evidence of [health conditions].
- (b) Partial admission: Dr Youssefi eventually agreed to the fact of the conviction and the agreed summary of facts.

[232] Mr Waalkens submitted that convictions for forgery are inconsistent with the fundamental obligation of practitioners to be honest and trustworthy. At the very least a censure and imposition of strict conditions would be appropriate.

²⁹ See page 248 of bundle.

[233] It is appropriate for the Tribunal to take into account Dr Youssefi's previous cancellation when considering penalty.

[234] Although clinical competence was not an issue before the Tribunal, it was submitted that we should consider imposing conditions to assist his rehabilitation to function within a healthcare team and respond in an appropriate manner when offered feedback.

[235] The PCC submitted that conditions should be imposed on Dr Youssefi's practice:

- (a) For a period of three months after resumption of practice, Dr Youssefi is to comply, at his own cost, with all recommendations and requirements of the Health Committee of the Medical Council, including its monitoring requirements for proof of compliance.
- (b) For a period of three years after resumption of practice, Dr Youssefi is to engage, at his own cost, with a mentor who is vocationally registered and approved by the Medical Council's Registrar on advice from the Medical Advisor, whose role will principally be to ensure that he has appropriate management strategies for managing stress, responding to feedback in a constructive manner and on professional behaviour.
- (c) Within 12 months of the Tribunal's decision, Dr Youssefi is to successfully complete an educational programme at his own cost designed by the Medical Council's Medical Advisors to the satisfaction of the Medical Council's Registrar, with the content of the programme focusing on professional interactions and communication with colleagues and professional bodies.
- (d) For a period of three years Dr Youssefi is required to advise all current and future employers, including any supervisor and head of department, the Tribunal's decision and its orders.

[236] The PCC noted that if Dr Youssefi's provisional registration status required supervision, the PCC would suggest additional conditions requiring supervision including regular feedback.

[237] The PCC further submitted that if the Tribunal were minded to grant Dr Youssefi permanent name suppression, that a summary of these conditions be entered alongside

Dr Youssefi's registration profile on the Medical Council's public register. Further, the PCC requested that any order permit the Medical Council to disclose the full nature of any conditions and this Tribunal's full decision to any overseas medical regulator on request.

Respondent's submissions

[238] For the practitioner, Mr Dean provided that Dr Youssefi accepted the findings, and would accept any conditions that might be imposed on his practice.

Discussion

[239] The PCC submitted that Dr Youssefi's dishonest offending is an aggravating factor. We disagree. It is the essence of his wrongdoing, rather than a matter of aggravation. Similarly, Dr Youssefi's breach of professional standards is intrinsic in a finding of professional misconduct, as is the continued accusations.

[240] However, his ongoing dishonesty is an aggravating factor. As noted by Mr Waalkens, the Court of Appeal took issue with a statement Dr Youssefi made in an application completed to obtain a visitor's visa for the United States.³⁰ This application was attached to an affidavit sworn on 8 February 2019. He had answered "Yes" to a question asking if he had ever been arrested or convicted for any offence or crime, even though subject of a pardon, amnesty or other similar action. However, he provided the following explanation:

This relates to not disclosing the finding of the Medical Ethics Committee in Malta to the NZ Medical Council. However, this breach did not relate to any act of immorality, indecency or dishonesty or any other act involving the abuse of a professional relationship. **I unfortunately rushed my registration application and left out the second page of the Malta Medical Council Certificate of Good Standing, which detailed a minor breach in medical ethics.** The Judge felt that I had suffered a number of consequences and, that a conviction alone is sufficient and was convicted for not disclosing this, and discharged without conviction on the charge of using a document to obtain a pecuniary advantage. (emphasis added by the Court)

[241] The Court of Appeal noted that Dr Youssefi's claim that the offending was the result of an inadvertent oversight through haste could not be reconciled with his guilty

³⁰ [17] to [20]

pleas and it was not correct to say only the second page was missing. The disciplinary proceedings in Malta are referred to on both pages of the original certificate.

[242] Dr Youssefi seems to fail to appreciate the enormity of his conduct. This is at best a serious lack of insight. But more than that, he has continued to try to mislead. He had altered a certificate provided by an overseas regulator. There was nothing inadvertent about his actions. The Tribunal finds Dr Youssefi's ongoing dishonesty is an aggravating feature.

[243] Dr Youssefi's perseveration in Dr [L]'s mental health in 2019 may be described as a lack of insight. Dr Youssefi not only continues to dwell on evidence that Dr [L] was mentally unwell []

[244] The Tribunal has some sympathy for the position Dr Youssefi found himself in on 3 February after a weekend of work. As noted above, it is accepted that he would have been tired and not expecting the type of meeting he had; a degree of defensiveness is understandable. However, there has been nothing in his subsequent responses to the PCC or in his evidence before the Tribunal that reassures us that he has reflected in a mature and professional way on his reaction.

[245] Dr Youssefi must understand that a further disciplinary charge involving dishonesty may jeopardise his registration. He has been given an opportunity to prove himself as a doctor and make an effective contribution to the health and wellbeing of society. The Tribunal has decided that the penalty proposed by the PCC is the most appropriate for assisting Dr Youssefi's rehabilitation and protecting the public. We impose the following penalty which also consider the least restrictive in the circumstances:

[246] Dr Youssefi is censured under section 101(1)(d) of the Act.

[247] The following conditions are imposed under section 101(1)(c) of the Act:

- (a) For a period of three months after resumption of practice, Dr Youssefi is to comply, at his own cost, with all recommendations and requirements of the Health Committee of the Medical Council, including its monitoring requirements for proof of compliance.

- (b) For a period of three years after resumption of practice, Dr Youssefi is to engage, at his own cost, with a mentor who is vocationally registered and approved by the Medical Council's Registrar on advice from the Medical Advisor, whose role will principally be to ensure that Dr Youssefi has appropriate management strategies for managing stress, responding to feedback in a constructive manner and on professional behaviour.
- (c) Within 12 months of the Tribunal's decision, Dr Youssefi is to successfully complete an education programme at his own cost designed by the Medical Council's Medical Advisors to the satisfaction of the Medical Council's Registrar, with the content of the programme focusing on professional interactions and communication with colleagues and professional bodies.
- (d) For a period of three years he is required to advise all current and future employers, including any supervisor and head of department of the Tribunal's decision and its orders.

Costs

[248] Under section 101(1)(f) of the Act, the Tribunal may order that the practitioner pay part or all of the costs and expenses of and incidental to any or all of the investigation or inquiry into the subject matter or the charge, the prosecution of the charge and the hearing by the Tribunal.

[249] Mr Waalkens outlined the general principles to be taken into account:

- (a) The fact that professional groups ought not to be expected to fund all the costs of a disciplinary regime; and members of the profession who come before disciplinary bodies must be expected to make a proper contribution towards the costs of the inquiry and hearing.³¹
- (b) Costs are not in the nature of a penalty or to punish.³²
- (c) Means, if known, are to be taken into account.³³

³¹ *G v New Zealand Psychologists Board* (Gendall J, 5 April 2004, HC Wellington, CIV-2003-485-2175) and *Vasan v Medical Council of New Zealand* (18 December 1991, AP43/91 at page 15)

³² *Gurusinghe v Medical Council of New Zealand* [1989] 1 NZLR 139 at 195

³³ *Kaye v Auckland District Law Society* [1988] 1 NZLR 151

- (d) A practitioner has a right to defend himself or herself.³⁴
- (e) The level of costs should not deter other practitioners from defending a charge.³⁵

[250] The total of the PCC's investigation and prosecution costs came to \$56,669.64, which included an estimate of the legal costs for the hearing.

[251] The Tribunal costs were estimated at \$36,114.69.

[252] Dr Youssefi was called again to evidence about his financial position. In summary, his assets are minimal, and he has considerable debt comprised primarily of legal fees. At the time of the hearing, he had an offer of employment, which was contingent on his obtaining a practising certificate, which in turn required him to have employment. Since 2020 he has had no wages or salary.

[253] The PCC sought a contribution of 50% towards the costs, and revised that to 40% of the costs, taking into account Dr Youssefi's financial position.

[254] The Tribunal took into account the following matters:

- (a) The charge had originally included other particulars which had been withdrawn.
- (b) Particulars 3 and 4 were not found to amount to professional misconduct on their own. The most serious aspect of the charge before us was the conviction.
- (c) Dr Youssefi's financial position will make payment of costs challenging.

[255] On the question of costs, some reduction is made based on Dr Youssefi's financial position. In relation to the Tribunal's costs, we fixed the contribution at \$14,500 which represents approximately 40% of the Tribunal's costs.

[256] We have made a further reduction of the PCC costs, taking into account the withdrawal of one particular of the charge, and we ordered \$14,000, which represents approximately 25% of the PCC costs.

[257] In total, Dr Youssefi must pay \$28,500 in costs.

³⁴ *Vasan*, above note 31

³⁵ *Gurusinghe*, above, note 32

Non-publication

[258] The PCC applied for orders suppressing the names of Dr [L], Dr Albrett and Dr Kumar, and Nurse Fowler as well as the evidence Nurse Fowler gave about some family matters that took her attention at the time Dr Youssefi was working on the mental health ward.

[259] Dr Youssefi also sought suppression of his name and/or personal information.

[260] Section 95(1) of the Act provides that all Tribunal hearings are to be in public.³⁶

Section 95(2) provides:

- (2) If, after having regard to the interests of any person (including, without limitation, the privacy of any 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:

...

- (d) an order prohibiting the publication of the name, or any particulars of the affairs, of any person.

[261] Therefore, in considering and application prohibiting publication, the Tribunal must consider the interests of the practitioner and the public interest. If we think it is desirable to make an order for non-publication, we may then exercise our discretion to make such an order.

[262] The public interest factors have been established:³⁷

- (a) Openness and transparency of disciplinary proceedings;
- (b) Accountability of the disciplinary process;
- (c) The public interest in knowing the identity of a health practitioner charged with a disciplinary offence;
- (d) Importance of free speech (enshrined in section 14 of the New Zealand Bill of Rights 1990); and
- (e) The risk of unfairly impugning other practitioners.

[263] There has been much discussion of the principle of open justice in the Courts and legal commentary. The principle of open justice has been described as a fundamental principle of common law and is manifested in three ways:

[F]irst, proceedings are conducted in 'open court'; second, information and

³⁶ This is subject to section 97 which provides for special protection for certain witnesses

³⁷ As set out in *Nuttall 8Med04/03P* and subsequent Tribunal decisions

evidence presented in court is communicated publicly to those present in the court; and, third, nothing is to be done to discourage the making of fair and accurate reports of judicial proceedings conducted in open court, including by the media. This includes reporting the names of the parties as well as the evidence given during the course of proceedings.³⁸

[264] In *Erceg v Erceg*³⁹ the Supreme Court said:

[2] The principle of open justice is fundamental to the common law system of civil and criminal justice. It is a principle of constitutional importance, and has been described as “an almost priceless inheritance”. The principle’s underlying rationale is that transparency of court proceedings maintains public confidence in the administration of justice by guarding against arbitrariness or partiality, and suspicion of arbitrariness or partiality, on the part of courts. Open justice “imposes a certain self-discipline on all who are engaged in the adjudicatory process – parties, witnesses, counsel, Court officers and Judges”. The principle means not only that judicial proceedings should be held in open court, accessible by the public, but also that media representatives should be free to provide fair and accurate reports of what occurs in court. Given the reality that few members of the public will be able to attend particular hearings, the media carry an important responsibility in this respect. The courts have confirmed these propositions on many occasions, often in stirring language.

[3] However it is well established that there are circumstances in which the interests of justice require that the general rule of open justice be departed from, but only to the extent necessary to serve the ends of justice.

[265] The disciplinary process needs to be accountable so that members of the public and profession can have confidence in its processes.⁴⁰

[266] The public interest in knowing the identity of a practitioner charged with a disciplinary offence includes the right to know about proceedings affecting a practitioner, but also the protection of the public and their right to make an informed choice.⁴¹

[267] In the present case, we must weigh those factors against the interests of the people seeking suppression. The High Court has said the statutory test for what is desirable is flexible:⁴²

³⁸ Jason Bosland and Ashleigh Bagnall, ‘An Empirical Analysis of Suppression Orders in the Victorian Courts: 2008-12 (2013) 35 *Sydney Law Review* 674.

³⁹ *Erceg v Erceg* [2016] NZSC 135.

⁴⁰ *Nuttall* 8Med04/03P para [26], referring to *Director of Proceedings v Nursing Council* [1999] 3NZLR 360; *Beer v A Professional Conduct Committee* [2020] NZHC 2828 at [40]

⁴¹ *Nuttall* 8Med04/03 para [27], [28], referring to *Director of Proceedings v Nursing Council* [1999] 3NZLR 360

⁴² *A v Director of Proceedings* CIV-2005-409-2244, Christchurch 21 February 2006 at [42] (also known as

Once an adverse finding has been made, the probability must be that public interest considerations will require that the name of the practitioner be published in the preponderance of cases. Thus, the statutory test of what is “desirable” is necessarily flexible. Prior to the substantive hearing of the charges the balance in terms of what is desirable may incline in favour of the private interests of the practitioner. After the hearing, by which time the evidence is out and findings have been made, what is desirable may well be different, the more so where professional misconduct has been established.

[268] We acknowledge the stress caused by disciplinary proceedings can adversely affect a practitioner’s mental wellbeing. As France J observed in *Dr X v Director of Proceedings*,⁴³ the “inevitable embarrassment” caused by publicity of disciplinary proceedings does not usually overcome the imperatives behind publication. France J considered that there must be something more “sufficiently compelling” than stress or embarrassment to justify suppression of a practitioner’s identity.

[269] The fact of Dr Youssefi’s conviction is already public. While that does not prevent the Tribunal from suppressing his name in these proceedings, no particular grounds were advanced. And adverse finding has been made and there is nothing to rebut the presumption in favour of publication.

[270] The PCC did not object to some of Dr Youssefi’s personal information being suppressed. There will be an order for non-publication of Dr Youssefi’s evidence provided about his beginnings of life prior to his family’s first arrival in Australia.

[271] There was some detail about Dr [L]’s mental health discussed in the hearing and Dr Youssefi’s responses contained in the materials. This included Dr Youssefi’s opinions. []. The Tribunal considers the personal interests of Dr [L] and his family outweigh the public interest in knowing his name, and accordingly his name and identifying details are suppressed.

[272] As for the PCC witnesses, the Tribunal found there were insufficient grounds advanced or the suppression of their names or the name of the hospital and District Health Board to displace the presumption in favour of publication as outlined in the principles summarised above.

T v Director of Proceedings and Tonga v Director of Proceedings)

⁴³ *Dr X v Director of Proceedings* [2014] NZHC 1798 at [14]

[273] The Tribunal heard some evidence of some health issues affecting members Nurse Fowler's family. Those details are suppressed.

Results and Orders

[274] The conviction for forging a document reflects adversely on Dr Youssefi's fitness to practise as a medical practitioner under to section 100(1)(c) of the Act and the conduct which was the subject of that conviction amounts to malpractice under section 100(1)(a) and conduct likely to bring discredit to the profession under section 100(1)(b). It warrants a disciplinary sanction.

[275] When considered cumulatively with the forgery, Dr Youssefi's inappropriate and disrespectful feedback as particularised in particular 3 of the Notice of Charge amounts to professional misconduct.

[276] The Tribunal censured the practitioner under section 101(1)(d) of the Act.

[277] The following conditions were imposed on his practice:

- (a) For a period of three months after resumption of practice, Dr Youssefi is to comply, at his own cost, with all recommendations and requirements of the Health Committee of the Medical Council, including its monitoring requirements for proof of compliance.
- (b) For a period of three years after resumption of practice, Dr Youssefi is to engage at his own cost with a mentor who is vocationally registered and approved by the Medical Council's Registrar on advice from the Medical Advisor, whose role will principally be to ensure that he has appropriate management strategies for managing stress, responding to feedback in a constructive manner and on professional behaviour.
- (c) Within 12 months of the Tribunal's decision, Dr Youssefi is to successfully complete an educational programme at his own cost designed by the Medical Council's Medical Advisors to the satisfaction of the Medical Council's Registrar, with the content of the programme focusing on professional interactions and communication with colleagues and professional bodies.

- (d) For a period of three years he is required to advise all current and future employers, including any supervisor and head of department of the Tribunal's decision and its orders.

[278] Under section 101(1)(f) Dr Youssefi must pay costs of \$28,500 comprising \$14,500 towards the Tribunal's costs and \$14,000 towards the PCC costs.

[279] Under section 95(2) there are orders for non-publication of:

- (a) The name and identifying details of Dr [L]
- (b) Details about beginnings of Dr Youssefi's life prior to his family's first arrival in Australia.
- (c) Details of health issues affecting members Nurse Fowler's family.

[280] Under section 157 of the 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 Medical 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 Wellington this 10th day of March 2023



.....

T Baker
Chair
Health Practitioners Disciplinary Tribunal

APPENDIX A: NOTICE OF CHARGE

Pursuant to sections 81(2) and 91 of the Act, the Committee charges Dr Teimur Youssefi that:

Conviction for knowingly using a forged document

1. On 14 February 2018 Dr Youssefi was convicted in the District Court at Wellington under section 257(1)(b) of the Crimes Act 1961, on one charge of knowingly using a forged document, being an offence punishable by a term of imprisonment not exceeding 10 years in that, in May 2015, in applying for provisional registration in New Zealand, Dr Youssefi falsified a certificate of good standing from the Malta Medical Council (CRN 15085004072).
2. The conviction particularised above at paragraph 1 reflects adversely on Dr Youssefi's fitness to practise as a medical practitioner pursuant to section 100(1)(c) of the Act.

Inappropriate and disrespectful response to feedback

3. Between 2 June 2015 and 7 July 2021, Dr Youssefi's responses to feedback about his competence were inappropriate and disrespectful, including but not limited to the following statements and conduct:
 - a. Behaving aggressively and/or unpleasantly during a meeting in February 2020 with Dr JA and Dr RK to discuss concerns about Dr Youssefi's competence; and/or
 - b. Stating to Dr JA in a meeting in February 2020 that other House Officers were bullying him and/or that the people who had raised concerns about his response to a medical emergency should be subject to an investigation; and/or
 - c. Stating incorrectly to Dr JA during a discussion about concerns with his performance that a nurse had been so impressed with his performance that she had praised his performance to the head of psychiatry; and/or
 - d. Questioning the fitness of Dr JA to act as a Prevocational Educational Supervisor; and/or
 - e. Stating that Dr L was crazy, that he was inherently biased and dishonest, and that Dr L's comments about his performance were invalid because he had suffered []; and/or
 - f. Stating that to the PCC in July 2020 that Dr JA's concerns were "flagrant lies" and that his concerns regarding his experience were "initial paranoid suspicion"; and/or
4. The conduct particularised above at paragraphs 1 and 3, either separately or cumulatively, amounts to malpractice or negligence in relation to Dr Youssefi's scope of practice pursuant to s 100(1)(a) of the Act and/or has brought or is likely to bring discredit to the profession pursuant to s 100(1)(b) of the Act.